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MUNICIPAL PROBLEMS

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BY

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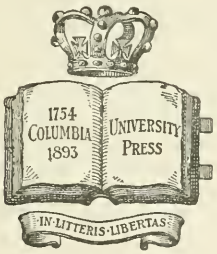
PROFESSOR OF ADMINISTRATIVE LAW IN COLUMBIA UNIVERSITY
AUTHOR OF "MUNICIPAL HOME RULE"



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PREFACE

In a former book, *Municipal Home Rule*, the attempt was made to ascertain what had been the effects of the various constitutional provisions adopted in the United States for the purpose of securing municipal home rule, what according to the decisions of our courts was the content of the sphere of municipal as distinguished from state activity, and what had been the success of the methods adopted in foreign countries to insure municipal autonomy.

Believing that the position which the city occupies in the general scheme of government has great influence on its organization and politics, the author has attempted in the following pages to treat the city rather as a part of the governmental system than as an isolated phenomenon, in the hope that the determination of the question, what the city really is, will throw light on most of the important municipal problems of the present day.

In carrying out his intention it has been necessary to elaborate and develop, even at the risk of some repetition, some of the points to which attention was called in *Municipal Home Rule*.

Acknowledgment is due for many valuable suggestions to Mr. Edmond Kelly of Columbia University, who has read the work in manuscript; to Mr. M. R. Maltbie, Fellow in Columbia University, for the index and a chapter on the effect of the recent administrative centralization in England; and to Mr. M. N. Forney of New York, who kindly allowed the author to examine an unpublished article of his on preferential voting.

FRANK J. GOODNOW.

COLUMBIA UNIVERSITY,
IN THE CITY OF NEW YORK,
February, 1897.

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MUNICIPAL PROBLEMS

CHAPTER I

HISTORY OF MUNICIPAL ORGANIZATION IN THE UNITED STATES

THE form of municipal organization obtaining in the United States was derived from England. Thus the first English charter of the city of New York is expressly stated to be modelled on the English municipal charters of the time.[1] Mayor Matthews, of Boston, says[2] that the organization provided by the first charter of Boston, namely the charter of 1822, "was simply an adaptation of the form of municipal government which had existed for centuries in the commercial towns of England."[3] By the English practice all purely municipal matters, that is, all matters which by the charter were to be attended to by the municipal

[1] Governor Nicolls says in the proclamation of date June 12th, 1665, revoking the old Dutch charter, that the new charter is to be "according to the custome of England in other his Ma^ties^ corporacons." — *Valentine's Manual*, 1860, p. 602.

[2] *The City Government of Boston*, p. 166.

[3] See Allinson and Penrose, *Philadelphia*, pp. 9 *et seq.* as to the influence of English conditions on the original American municipal charter.

corporation, were entrusted to a council which consisted normally of the mayor, recorder, aldermen, and councillors, all of whom were generally elected by a narrow body of freemen, or were chosen by the council itself. The mayor, recorder, and aldermen, in addition to being municipal councillors, had judicial and police functions to perform. Thus in New York by the Dongan charter the mayor's court was a very important authority, while the mayor and aldermen had practically all the powers of justices of the peace. These functions, however, being regarded as governmental rather than corporate in character, were not considered as vested in them as a result of the incorporation of the city, but were granted to them by special royal commission, sometimes contained in a separate document, but usually to be found in the charter. That is, *pro hac vice* such officers were royal agents rather than municipal officers.

The town council was split up early in the history of the United States, the mayor becoming ultimately the appointee of the people of the city instead of the council, as was at first frequently, and indeed normally, the case,[1] while the judicial

[1] See Dillon, *Municipal Corporations*, Vol. I, p. 69; Bryce, *American Commonwealth*, 1st ed., Vol. I, p. 594. The mayor was to be elected in Boston by the first charter, namely that of 1822. *Johns Hopkins University Studies in History and Political Science*, Vol. VI, p. 34. In New York the people were given the power to elect the mayor in 1834, in Philadelphia in 1839 Laws N. Y. of 1834, Chap. 23; *J. H. U. S.*, Vol. V, p. 35.

functions of the mayor and aldermen were vested in officers quite separate from the administrative authorities of the city. In New York these judicial functions are now discharged by the Supreme Court of the state, the Court of General Sessions, and by the district and police courts. During the period when all municipal administrative functions were discharged by the city council, *i.e.* when the council was practically the only municipal authority known to the law, that body had the power to determine by ordinance the detailed administrative organization of the city. This was done by the formation of council committees for the different branches of municipal administration which were established.[1] This is at present the rule in England. These council committees had, subject to the approval of the council, the power to appoint the various subordinate officers necessary for the city administration, and provided for by the council. Later the council in certain instances formed separate city executive departments. Thus in New York the charter of 1830, which, by the way, it is interesting to note, was framed by a municipal convention, and adopted by the people of the city, and afterwards enacted into law by the legislature, provided that the executive business of the city should be attended to by departments which were to be organized, and whose heads, although not members of the common council, were to be

[1] See *e.g.* Matthews, *The City Government of Boston*, p. 166.

appointed by it.[1] The council soon, however, lost its organizing power together with its power of appointing municipal officers. Thus in New York, in 1849, the state legislature itself finally determined what executive departments should exist, and took away from the council the power of appointing the heads of such departments.[2] A perusal of city charters, as well those to be found in special acts as those contained in general municipal corporation acts, which as a result of constitutional provision have been so frequently passed in recent years, will show that the attitude of the legislature of the state of New York towards the city of New York, was not the exception, but rather the rule.[3] The methods by which the heads of these

[1] See also *Corporation Ordinances, Revised,* 1845.

[2] Laws of 1849, Chap. 187, Sec. 20. In 1846, a municipal convention to amend the charter had again been held. The result of its deliberations was to make the heads of departments elective by the people of the city. One of the members of this convention expressed the sense of that body when he said that the election of these officers by the common council had led to the "banishment of the true exercise of decorum and political virtue from our legislative halls, and had created in the city government an unsteady, ill-directed, and changeable course of policy." Report of Mr. Porter, City Convention of 1846, Debates, pp. 163 and 167.

[3] See the summary of special city charters and general municipal corporation acts, contained in Vol. V of New York Senate (Fassett) Committee on Cities Report, transmitted to the New York legislature in 1891. See also the Proceedings of the National Municipal League of 1894–95. There are at the present time, however, city councils which have considerable organizing power. See the Illinois General Municipal Corporations Act of 1872.

executive departments thus made independent of, or at any rate separated from, the common council have been appointed, have varied considerably. For a time they were in accordance with the dictates of democracy, which was so rampant everywhere about the middle of this century, elected by the people of the city. This method, however, proved in many cases unsatisfactory; but in most cases where a change was made, the old power of appointment was not restored to the city council. The council had itself become discredited in the eyes of the people. Mr. Matthews says:[1] "A distrust of municipal legislatures and of the capacity of their committees to conduct the executive business of a city government has been the chief feature of municipal development in this country during the past thirty years." The development of the independence of the mayor and the executive departments is evidence of this fact; but not conclusive evidence, inasmuch as the separation of the mayor and the executive departments from the council was due, partly, at any rate, to the influence of the principle of the separation of powers, which had been adopted in the state and national governments, and which it was believed could, with advantage, be adopted in the municipal organization. In some cases the demand was made that the heads of certain of these executive departments be appointed by the state execu-

[1] *The City Government of Boston*, p. 170.

tive, the governor. This demand has been acceded to quite frequently, in the case of the police department, and even now in not a few instances the police commissions in the larger cities are appointed by the governor, or by the governor and the senate, in some cases even by the legislature. In other cases, indeed the majority of cases, it was provided that the heads of municipal departments were to be appointed by the mayor and confirmed by the council. The democratic methods of the middle of the century have not, however, been totally abandoned. Thus it is not uncommon at the present time to find the chief financial officer of the city, that is the comptroller or treasurer, elected by the people.[1] In some of the larger cities the appointment of the heads of departments is to be made by the mayor alone, uninfluenced by the council. This would seem to be the modern tendency. As regards the tenure of office of these heads of departments, there is no uniform or universal rule, though the idea is growing that they should be removable by the mayor.

Not only has the council very generally lost its power of organizing and appointing the official service of the city, it has also lost very many of its former financial and legislative powers. This loss is possibly more marked in the case of larger cities

[1] Certain other heads of departments are also sometimes elected by the people. See the summary of the *Fassett Committee's Report*, already referred to, Vol. V.

in the state of New York than elsewhere; but everywhere the importance of the council has very largely diminished. The distrust of the city council has been so great that even when it has remained the nominal guardian of the finances of the city, its financial powers, *i.e.* its powers of appropriating money for city expenses, and of levying taxes and making loans, have really been seriously limited. This has been done through the continual passage of laws actually special in their operation which determine the amount given cities shall expend for given purposes. As the courts hold in such cases that municipal authorities are obliged to make provision for such expenses and in the amounts decided on by the legislature, the function of the council as to such matters, even if it possesses the taxing power, becomes a merely ministerial one.[1] Of late years, however, there has been a reaction against this regulation of local finances by central legislative action, and in so far as this has found expression in the constitutional prohibition of special legislation relative to cities or in the grant to municipal authorities of a suspensive veto power as to certain special legislation, as was provided by the last New York constitution, city authorities are recovering in part their former financial and legislative

[1] See People *ex rel.* Wright *v.* Common Council of Buffalo, 16 Abbott's N. C. affirmed in 38 Hun, N. Y. 637; Brewster *v.* Syracuse, 19 N. Y. 116; Perkins *v.* Slack, 86 Pa. St. 283.

powers. What has been said of the financial powers of cities is true also of other essentially legislative powers. Thus the powers of passing local ordinances once exercised by the local, municipal council are now frequently exercised by the central state legislature, which has incorporated its will into the city charter and its amendments, or by the mayor or the various executive departments to whom the ordinance power has been granted by statute. A striking example of this centralization of local ordinance powers in the state legislature is found in the present charter of New York,[1] which, as a result of statutes passed almost every year, has grown into an enormous code. Exclusive of those laws which do not in terms but do in fact amend it, it contains at the present time 2143 sections, and is comprehensible to few even of the learned.[2] Again, in New York city at the present time it will be found that many of the most important ordinances are issued not by the council but by one of the executive departments, as, *e.g.*, the Health Department, which has perhaps wider powers of ordinances than most of the other city executive departments.

[1] Consolidation Act of 1882.

[2] Judge Church says (62 N. Y. 459): "It is scarcely safe for any one to speak confidently of the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn." This difficulty is in the opinion of the Fassett Committee as great as to all of the other cities of the state of New York. *Report*, Vol. V, p. 11.

This short sketch of American municipal development reveals two facts. In the first place, it shows that the people of the cities have very largely lost their original powers of local self-government. City charters which were originally conceived of as in the nature of agreements or contracts[1] have come to be regarded as nothing but laws which may be amended and repealed by the legislature as it sees fit, without regard to the wishes of the people of the cities affected by them. The city is treated merely as one of the long series of administrative authorities. Its powers and competence are delimited from time to time by the law-making power of the state in the same way as it delimits the powers of the well-recognized state administrative authorities. Municipal administration has thus come to be regarded as almost a part of general state administration. This view of the city's position has arisen very largely from the desire for administrative simplicity, and from the reluctance to maintain within the district of the city two sets of administrative authorities. Whenever possible, the state has made use of the city authorities for the transaction of state business, and in many cases where the city is a large one, has consolidated city and town and even

[1] Judge Spencer says in the case of the Mayor *v.* Ordinaux, 12 Johns. 125, it was "the almost invariable course of procedure for the legislature not to interfere in the internal affairs of a corporation without its consent."

county administration in the hands of the city authorities. The more public and general character assigned to the city administration has really had the effect of decreasing the powers of the city. For the legislature, being called upon to regulate frequently those matters attended to by the cities, but of vital interest to the state as a whole, has almost forgotten that the cities have local duties to perform, in which it should not interfere without the consent of the city concerned, has treated all administrative functions discharged by cities as part of general state administration and as therefore subject to legislative regulation and control.

Another factor which has exerted an influence in decreasing the local autonomy of cities is to be found in the increasing distrust of the city council, which has had the result, as has been pointed out, of the destruction of the powers of that body. The weakening of the position of the city council has had the result of decreasing the local autonomy of cities because there are many matters pertaining to city government which have not been in the past and are not at the present time considered in other governmental relations as proper subjects for executive action. Among them may be mentioned the determination of municipal expenses. If there is anything which is settled in our constitutional law, it is that the taxing power and the power of appropriating money, through whose

exercise governmental policy is determined, are legislative in character. This is so because it is believed that the people who are to be taxed and whose money is to be spent is best represented in a body which is chosen by it, that the members of such a body reflect more clearly the different phases in feeling which are to be found among the people than any one man or any small body of men can ever reflect them. It is so, also, because the action of a legislative body is, as a rule, preceded by discussion in which these phases of feeling will naturally be brought to light and because of the fact that, owing to the length of time consumed by the action of a legislative body and the publicity by which it is generally accompanied, public opinion is given a chance to express itself and to influence the final result of the deliberation. This is not the case with executive action. So firmly fixed is this idea in the minds of the people, that even where the municipal council has been deprived of what are in their essence legislative powers, the loss by the council has not enured so much to the benefit of the municipal executive authorities as to that of the central legislature. The result, therefore, of the destruction of the municipal council has not been, it will be noticed, the abandonment of the council system of municipal government. Municipal legislative functions are discharged now as they were before by a council, but that council is no longer a local council,

with any sense of responsibility to the people of the city, but a central council, the legislature, elected by the people of the state as a whole, and not by the municipal population, a legislature which can in the nature of things, even with the best of will, know little of the particular municipal conditions which it attempts to regulate — a legislature, further, which has not been actuated always by the best of intentions towards the cities, but dominated, and naturally dominated, by the state political parties, and regarding the cities as pawns in the great game of national and state politics, has not scrupled to sacrifice them where ultimate advantage for the more important end of partisan political supremacy has been anticipated.

The second fact to be noted is the establishment of municipal executive departments, independent of the council and for a time quite universally, and even now commonly, independent of any municipal authority. Each of these departments or boards is often a law to itself, determining subject to the statutes of the state legislature the policy which it shall follow, regardless of the interests of the city in other directions, and only controlled by the fact that the amount of money which it may spend is generally determined by some authority other than itself. The authority which determines municipal expenses is often, however, the legislature of the state, so that there is frequently no local financial control at all.

Sometimes these departments are so independent of municipal control that their accounts are not audited by the regular city auditor or finance department. The heads of these independent executive departments are not infrequently of different political views, and being, perhaps, more devoted to party than to the city, or at any rate holding different views as to municipal policy as a result of their varied party membership, they are often unable to pull together. Their wrangles have often almost caused a cessation of municipal business, and the power which they have had in those states, where special municipal legislation is permitted, to apply to the legislature for such special legislation as will be of peculiar advantage to their own department, or to the party which they represent, has been made use of either to magnify their own importance or to benefit the party to which they belong, at the expense of the general welfare of the city.[1] This lack of cohesion and of concentrated organization it has been attempted to do away with of late years by subjecting the heads of the various departments to the control of the mayor, who is not infrequently given the right to appoint them at the beginning of his term of office, and less frequently, but still in several important instances, also the power to remove them during their term of office. While this increase in the

[1] See *Fassett Committee Report*, Vol. V, pp. 13, 690. See also Allinson and Penrose, *Philadelphia*, p. 271.

power of the mayor does much to bring about that concentrated organization without which good municipal government is extremely difficult, it does not at all affect the general relation of the city to the legislature. No matter how concentrated may be the executive municipal organization, it still remains true that its policy may be determined very largely by the legislature. Municipal home rule and local autonomy are as difficult of attainment under a concentrated system as under the loosely organized board system of former years, so long as the legislature treats municipal administration as a part of state administration.

Such has been the history of municipal government in the United States and such is its condition at the present time. Starting with large local self-government and a municipal organization concentrated under the management of a local council, we are now governed by a central council, the state legislature, which often has not large knowledge of city affairs nor a strong desire, on account of its subjection to political influences, to reach the best solution of municipal problems, and whose municipal policy is carried out in a haphazard way by a series of municipal departments, largely independent of each other, and often owing no allegiance to any common municipal or even central administrative superior. We have reached this position after trying almost all the experiments in

mere details of municipal organization that the mind of man could well devise,[1] experiments which are in many cases contradictory one with the other. Hardly any two city charters will be found to agree in even the important details of municipal organization. Indeed, the perusal of the charter of a single city will oftentimes reveal the fact that its organization is not based on any fundamental theory. Thus we often find in the same city certain executive officers elected by the people, others appointed by the mayor and council, and still others appointed even by the state governor or legislature. Most city charters further show the influence upon them of all the great waves of general political thought which have swept over the country during the past century. Thus we find very commonly the influence of the principle of the separation of powers. While this principle lies at the foundation of our state and national government, it has been held by the courts never to apply, unless expressly so provided, to our local government. Further, as a matter of fact, it did not govern the organization of municipalities at the time the early constitutions which adopted it

[1] As Dr. Shaw well says (*Municipal Government in Continental Europe*, p. 305): "In the United States the reformers . . . are forever overhauling, repairing, and reconstructing the form of municipal government." "Their attention has been devoted to the structure and mechanism, and . . . they keep changing it perpetually."

for the state governments were put into force. But in hardly any city in which the separation of the mayor and executive departments from the council has been provided, has there been a clear distinction made between what is really administrative and executive and what is legislative in character. The power to make contracts is often left with the council, while the power of appointment which, if the mayor and council are to be separated, should be entrusted to the mayor alone, is most frequently exercised by the mayor and council conjointly.

Again, we find the elective principle applied generally to municipal officers, regardless of their character and introduced at about the time that the principles of democracy exercised so strong an influence on all parts of our organic law which were susceptible of change in this direction. The elective principle and the principle of separation of powers were introduced into the municipal organization, not because they were well suited to it, but because they had long been adopted in the state or county and town governments, and had been reasonably successful there. Again, the bicameral system for the council was introduced in many cases, not because it was specially suited to municipal government, but because it was the recognized method of organizing the legislature of the state and nation, and what was good for the state and nation was presumably good for the city.

In almost all these cases changes were made in the primitive Anglo-American municipal organization, not because those who were responsible for them had any experience applicable to municipal conditions, — for at the time these changes were made no one can be said to have had this experience, as the modern city is a very new thing, — but because these changes were in accordance with principles which it was universally believed had been successfully applied in the national and state governments. It is not intended by what has just been said to convey the idea that all these changes were made simply for the sake of changing or for the mere purpose of applying to a successful system of municipal government principles which it was hoped would make it more successful. It is doubtless the case that municipal conditions were such during the first half of this century that changes of some sort seemed advisable. But it is contended that the changes that have been made have not generally been made after a careful study of the municipal problem and with particular reference to the special needs of cities. Too much weight has been allowed to the teachings of a doctrinaire political science, certainly too little attention has been given to distinctly municipal needs, while little or no attention at all would seem to have been given to the way in which problems similar to those confronting the cities of this country had been solved in foreign countries.

At the present time, finally, after all the experience which this half century of experimentation should have given us, it must be confessed we have no generally accepted theory of municipal government. No better proof of this can be found than the proceedings of the National Municipal League at the conferences at Minneapolis and Cleveland. Papers were read by gentlemen from all parts of the country on all sorts and conditions of municipal government, with the result of an almost complete lack of agreement upon the part of those present as to the proper system of municipal organization for this country.

This lack of any fundamental theory of municipal government, both upon the part of the legislature which controls the formation of city charters, and upon the part of those most interested in municipal reform, who are the makers of public opinion, is due, it is believed, to the fact that we have not in this country assigned the proper place to the city in our governmental system. Our failure is due partly to historical, partly to legal reasons. On the one hand, as a people we have been so occupied in determining the position of the state in our public polity that we have had little time to devote to the city, which is a very recent development, and which has been treated very much as we have treated the county and the town. On the other hand, the solution of the problem how to protect private rights under a

democratic form of government has confined our study of questions of public law almost entirely to those of a constitutional character. Administrative questions have been relegated to the background, or when they have imperatively demanded attention, they have been solved by resort to temporary and often unwise expedients, — expedients in many cases inconsistent one with the other and seldom based on any fundamental theory. In the case of the city our attention has been directed almost exclusively to the problem of its internal organization. Almost all our attempts at municipal reform have been made in the matter of municipal organization. One plan after another has been tried until it may be said that almost all forms of municipal organization possible of adoption have been subjected to the test of experience. And while we have undoubtedly improved somewhat our municipal conditions, it is still true that we are far from having reached an ideal solution of the problem of municipal government, and, if we are to judge by results, are at the same time much behind what has been done both on the continent and in England. Further, the improvement to be noted in our city government would not seem to be commensurate with the time and effort that have been expended upon the problem by the thinking classes of the community. Finally, the fact that England and the continental countries have been reasonably successful in their

solution of this problem, notwithstanding that they have systems of municipal organization which are quite different one from the other, although in a general way they all resemble the organization which we abandoned long ago as productive of the most evil results, would seem to indicate that our trouble is not in our form of municipal organization, but rather in the position which has been assigned to our cities in our general system of government. The facts, that our numerous changes in municipal organization have resulted in comparatively little improvement, and that the results which have so far attended the study of foreign municipal institutions are of very slight importance in helping us to solve our problems, go far to prove that in our attempts both at domestic municipal reform and to derive benefit from foreign municipal experience, we have regarded the city too much as an isolated phenomenon and too little as a part of a general scheme of administration. If we change our point of view, if we consider the city not as an organism complete in itself, but as merely a member of a much larger organism, — in other words, if we consider the position which the city occupies in our system of government, and if we then compare it with the position which it occupies in those countries in which municipal government has been successful, — it is believed that a new line of investigation will have been undertaken from which much good

may result. The attempt will be made in the following pages to ascertain what is the correct position which the city should occupy and what effects the assignment to it of such a position will have upon American municipal government.

CHAPTER II

THE POSITION OF THE CITY

The cause of the fluctuating and often inconsistent policy of the legislature on the one hand, and of the attitude of municipal reformers on the other, towards the organization of cities in the United States, it has been pointed out, is to be found in the failure to assign to the city its proper position in the governmental system. Whatever may have been the origin of the city, and whatever may have been the original position of the city in the American law, the American city, at the present time, is, in all but a very few respects, like the county and the town, a mere administrative circumscription of the state. It is possessed, it is true, as are also the county and the town, of certain corporate powers; but it is almost absolutely subject to the power of the legislature in the absence of specific constitutional provision. "A municipal corporation . . .," says no less an authority than the Supreme Court of the United States,[1] "is a representative not only of the State,

[1] United States *v.* Baltimore and Ohio Railroad Co., 17 Wallace, 332.

but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may govern . . . the local territory as it governs the State at large. It may enlarge or contract its powers, or destroy its existence." While such a description of the legal position of the city is, of course, made from the point of view of the constitutional power of the legislature over cities, it is none the less true that it expresses not merely the power which must, in any country that has arrived at an adequate conception of sovereignty, be in theory accorded to the legislature; it also, unfortunately, expresses as well the policy of most of the American legislatures towards the cities. The legislatures, it would seem, have come to believe that the absence of constitutional limitations on their powers is indicative not merely of the theoretical extent of their power, but also of the legislative policy which they are to follow. The average American legislature has, as a matter of fact, treated the city as a mere agent of the state government, whose institutions it is not merely free to organize as it sees fit, but whose policy it may itself properly determine. Many persons, conscious of the evils due to the theory that municipal administration is merely a part of state administration, have put forward the view that the city ought not to be regarded as a governmental agent. They assert that the city

is really a business corporation, and that its organization should be determined and its management conducted on what are called "business principles." While this is a view which has had little, if any, influence on the law, it is believed to be acquiring more and more adherents among that largely increasing class of persons who are interesting themselves in the study of municipal problems. This view is, however, as false as the view which our legislatures seem to have, that the city is a mere state agent, and if adopted would undoubtedly result in as great disadvantages as have followed the adoption of the other view.

The determination of the proper position of the city is of much more than mere academic interest. It has an important influence on all phases of the municipal problem. If the city is a mere business corporation, as so many have said that it is, it should be governed in accordance with the principles of business. If, on the other hand, it is a governmental organ, it should be governed in accordance with the principles of government. If a city is a business corporation, the members of the corporation — that is, those who ultimately control its policy — should, in accordance with the principles of business, be those pecuniarily interested in its affairs. If it is an organ of government, the members of the city corporation should be those to whom the law of the land gives the ultimate determination of governmental

policy. What now is in theory the proper position for the city to occupy? "Municipal corporations," as Mr. Matthews has well said, "are organized not to make money, but to spend it. Their object is government, not profit."[1] Municipal corporations are bodies both politic and corporate; they are, further, more politic than they are corporate. They have, from the beginning of their history, had more political than corporate functions to discharge. Indeed, in their original English form they were bodies politic without being corporate at all. But when the original English municipality became a corporation, it ceased to be merely a governmental agent. It became as well an organ for the satisfaction of local needs, needs which while quite distinct from the general governmental needs of the country were still of a social and governmental, and not of a mere business character. A municipal corporation is to be differentiated from the ordinary governmental authority, not because its work is of a business character, but because it is of a local character interesting only indirectly the state as a whole. For the sake of administrative simplicity, and in order to obtain decentralized administration — what Anglo-Saxon peoples call local self-government — the municipal corporation may be made use of by the state as its agent. But the fact that it acts as an agent of the state does not cause it to cease to be an organ for the satisfac-

[1] *The City Government of Boston*, p. 189.

tion of local needs any more than it causes the state business to which the city attends to become municipal business. To be more concrete, the fact that a city has charge of the police and schools neither takes away from the state as a whole its vital interest in the police and schools, nor causes such matters as street cleaning and municipal water supply to be matters of general state concern. In the one case the city is acting as the agent of the state. In the other it is ministering to local needs.

The statement of the proper position of the city in the governmental system is, therefore, that it is always a public, *i.e.* a governmental, corporation. It is, however, primarily an organ for local government — for the satisfaction of local needs. It may be, and often is secondarily, an agent of state government. The two functions which the city discharges should further be kept distinct the one from the other.

The fact that a city which occupies its proper position in the governmental system has two somewhat separate spheres of action leads to several concrete results. In the first place, the fact that a city is an agent of the central state government, makes it necessary to give to the central state government some control over it. The extent of this control must, of course, depend upon the extent to which the city is an agent of the state government. If it is, as is the American city, attending to

almost all matters of central concern attended to within the district of the city, this control must of necessity be a large one. If it is a large one, American experience goes far to prove that the legislative authority, which in our system of government both ultimately determines the bounds of municipal competency, and exercises what central control over cities there is, is apt to confuse the sphere of local competency with the sphere of state agency, and to extend the central control over both spheres of action indiscriminately. If this is the case, the position of the city as an organ for the satisfaction of local needs is overlooked, as is actually the case in the United States; and the city is ultimately deprived of sufficient freedom of action to permit of any great municipal development, and even of good government. If, on the one hand, sufficient account is not taken of the important central state functions which the city discharges, lack of uniformity in administration of matters of general concern, where such uniformity is one of the prerequisites of efficient administration, will result. If, on the other hand, sufficient attention is not directed to the fact that the city is an important organ for the satisfaction of local needs, the city loses its powers of local autonomy, and any vigorous municipal development is made impossible.

In the second place, the position of the city influences, to a large degree, the form of the

municipal organization. For if the city is merely an organ of state government, the determination of the policy to be pursued by the city as such state agent may safely and properly be entrusted to the state legislature, which is the body that determines the policy of the state at large. No local legislative body is necessary. If, on the other hand, the city is an organ for the satisfaction of local needs, it will then have a local policy which should be determined by some local legislative body, if the principles at the basis of representative government are to be applied in the case of the city. Such is clearly the teaching of the history of American municipal development. The emphasis given to the state agency of cities has, on account of the failure of the legislature to recognize any sphere of municipal activity, resulted in the loss by the cities of their local legislative powers; has led almost to the destruction of the local legislative body, the city council. This decrease in the importance of the municipal legislature has itself resulted in further encroachment by the legislature on the sphere of municipal autonomy, since there are so many matters connected with the determination of municipal policy which cannot be entrusted to executive authorities so long as we continue to hold to our general principles of government.

Finally, the actual position of the city in the governmental system cannot fail to have an im-

portant influence on the political organization and action of its people, and on the attitude of the political parties of the state as a whole towards city affairs. In the first place, the fact that it is a governmental organization makes it necessary that universal suffrage shall be adopted if it is the rule in the state. In the second place, the fact that the city is an organization for the satisfaction of local needs will have an important influence on the political action of its citizens. For in so far as its local and, so to speak, corporate character is emphasized, it will be both easier for the municipal electors to give to purely municipal problems the attention they deserve and must have, if municipal government is to be actuated by purely local and municipal motives — if the municipal government is to have regard for municipal needs. On the other hand, just so far as the state agency of the city is emphasized, just so far will the people of the city be apt to carry into their municipal policy the passions and prejudices which they have as state electors. For the issues of state, and in the United States of national politics as well, being so much larger, and from one point of view, so much more important, cannot fail to overshadow local issues. Just as the treatment of the city as an agent of the state, rather than as an organ for the satisfaction of local needs, never fails to result in a gradual extension of the central control over local matters, so under similar conditions do local politics

become subordinated to state and national politics. The fact that the system of administration in force in a country is decentralized, tends, if anything, to increase the influence of state and national politics over municipal administration. For, in such a case, it is all the easier to confuse local and state issues. Uncontrolled local administration of general laws practically not only results in the grant of *quasi*-legislative power, certainly a local veto power, to local administrative authorities, but also tends, on account of the fact that the central legislature is the only body which can exercise any control over the localities at all, to lead the legislature, in which state political parties must have great influence, to exercise its control indiscriminately over matters of both central and local concern; tends to induce the feeling on the part both of the legislature and the political parties that all matters attended to by city officers are of interest to the state as a whole, are a part of state politics.

The position assigned to the American city is thus not the proper one. While we must concede that, in order to avoid the dangers of state disintegration, the legislature should theoretically have large powers over cities, at the same time we ought to insist that the legislative policy should be such as to permit of the development of a large sphere of municipal action in which the cities may move free from legislative interference. Such, however, has not been the policy of our legisla-

tures, which have made use of their large powers over cities to regulate in detail all the actions of cities, thus reducing them to the position of mere agents of general state administration. The results of this theoretically false position which has been assigned to our cities, have been, in the first place, a gradual centralization of the affairs of the city in the hands of the state legislature, and the loss by the city of local legislative powers; and, in the second place, the determination of questions of municipal policy by other than municipal considerations — the intrusion of the state and national parties into municipal politics. This last result has been made easier, as a result of the legislative centralization just referred to, since of necessity legislative policy generally must be determined by considerations of state politics, and so far as state politics are connected with national politics, by considerations of national politics. Undoubtedly the proper position assigned to our cities by the American law and the American legislative practice is not altogether responsible for the acknowledged defects of American municipal government. Our entire government has been debauched by the spoils system, against which vigorous attacks have been made in the immediate past, and are being made now, and from whose destruction great good may be anticipated. Further false principles of administrative organization have unquestionably been followed in the formation of our city govern-

ments, largely as a result of the attempt to cast our municipal organization in the same mould as the general governmental organization of the state. But that the position assigned to the city by the American law has been one of the causes of the present conditions of municipal government in the United States cannot be successfully denied.

In the following chapters it will be attempted to ascertain what changes in the American administrative system must be made in order that a correct position may be assigned to our cities, so that they both may be sufficiently subject to central control to form efficient agents of state administration, and have sufficient freedom of local action to permit a vigorous municipal development. Later the attempt will be made to determine what effect the assignment to cities of their proper position will have on the political organization of the municipal population, and what is the form of municipal administrative organization which is demanded by American conditions.

CHAPTER III

THE SPHERE OF MUNICIPAL ACTIVITY

It has been shown that the city has primarily most important local duties to perform, and in their performance must be allowed large freedom of action if we are to expect great local development. How now should its sphere of local activity be delimited and what should be the content of that sphere? In the first place, how shall we delimit the city's sphere of local activity? Up to the present time the sphere of local activity of the American city has been delimited in detail by the legislature. The reason why such a method of delimitation has been adopted is to be found in English history. The early suppression in England of feudalism, with its ideas of local autonomy, made impossible the existence of autonomous communities. All parts of the English kingdom were, at quite an early time, subjected to the law-making power of Parliament. So far was legislative centralization carried in England that originally all corporate capacity in the localities was denied. In other words, localities had legally no individuality, no sphere of action of their own, which could be dis-

tinguished from the general sphere of action of the state as a whole. They were from the point of view of legislative policy mere divisions or circumscriptions in which the general statutes of the kingdom were administered. The boroughs did, it is true, obtain at the end of the fifteenth century corporate capacity, but the corporate capacity they obtained was not extended to any other of the localities until very recently. The English county became a corporation only in 1888, the parish only in 1894. Further, the corporate capacity conferred upon the boroughs merely made it possible for them to own property and sue and be sued, *i.e.* gave them a legal individuality from the point of view of the private law. It did not at first have any influence upon their governmental position, *i.e.* it did not have any appreciable influence on their public legal relations. The idea was held, after as before the grant to them of corporate capacity, that boroughs were, so far as the exercise of governmental powers was concerned, merely the delegates of the central Parliament or legislature in which was concentrated ultimately all governmental power. The concrete legal effect of this idea upon the position of the modern city, both English and American, and more particularly upon the latter, as a result of our last century of development, is that it is practically an authority of enumerated powers. The courts as well as the legislature are responsible for this condition of

things, inasmuch as they have very generally adopted the rule that the powers granted in municipal charters are to be given a strict construction. But even when they have treated municipal powers in a more liberal spirit, their efforts have been very largely unavailing. For the discharge of the functions of the modern complex municipal organization requires the expenditure of an enormous amount of money. This it is impossible for most American cities, which are not generally endowed with large amounts of property, to obtain, without resorting to the taxing power, directly through the levying of taxes, including within these local assessments, indirectly through borrowing money to be paid out of the proceeds of taxation. Now the English and American law has always followed the rule that the taxing power can be exercised only with the consent of the people, which is to be given by its representatives, to be found in the legislature. The fact is then that, as a result of our ideas of the supremacy of the legislature, and of our habits, based on long years of precedents, of legislative centralization, the American city is completely at the mercy of the legislature, both so far as its local governmental powers and its financial resources are concerned. The constitutions which have been adopted in this country have not protected it, so far as its public powers were concerned, since the grant of governmental powers has never been construed as a contract whose obli-

gation could not be impaired. As no legislature is far-seeing enough to be able to determine for all time what powers it may be expedient for a city to exercise, the legislature cannot, even under the régime of special charters for cities, give a city powers which will be permanently satisfactory so long as these powers are enumerated. The régime of special charters may be satisfactory as a means of differentiating cities on the basis of geographical and other local variations. It can never, so long as charter powers are enumerated, make allowance for the changes in municipal conditions brought about by the mere passage of time. As a result of these changing conditions, American cities are forced to apply continually to the legislature for new and extended local powers. Such powers are often granted *nunc pro tunc* through the exercise of the power the legislature possesses to ratify illegal action. Although the exercise of such a power is subject to abuse, its recognition seems to be absolutely necessary, for the legislature which delimits the sphere of municipal competence is not always in session, and in many cases municipal authorities are not able to wait, before exercising necessary powers, until the legislature can be called together and pass the necessary legislation. Such powers must be exercised, and, as a matter of fact, they are exercised, and then appeal is made to the legislature to ratify the action already had of the local authorities. No better illustration

of this method of action can be found than is given in the case of Hasbrouck *v.* Milwaukee.[1] Here the city was empowered to spend a certain sum on its harbor. It spent more, and the question arose as to the power of the legislature to ratify its action. In this particular case it was decided that while the legislature might take such action when requested so to do by the city, it could not without the assent of the city. Further, our system of administration is not a professional one, and the authorities which exercise administrative powers have not great legal knowledge. Indeed, one of the effects of special legislation itself is to make it difficult, if not impossible, for even bodies quite learned in the law to know exactly what the law is.[2] So that with the best of intentions it is not infrequently the case that administrative bodies will exceed their powers, and will have to appeal to the legislature to ratify their actions. A large part of the work of the legislature under the régime of special legislation consists thus in ratifying illegal acts of local bodies. This has been generally held by the courts to be a perfectly proper exercise of legislative power.

The necessity of changing and extending local powers, which are enumerated by the legislature in great detail, has brought about an immense amount of special legislation, and the legislature,

[1] 13 Wisconsin, 37.

[2] See the remarks of Judge Church, cited above, p. 8.

accustomed to regulate by special act municipal affairs, on the proposition of the various cities, and obliged to exercise through special legislation the necessary central control over matters attended to by cities, but of vital interest to the state as a whole, has got into the habit of passing special legislation with regard to purely municipal matters of its own motion, not only without the consent of the local people, but often against their will and for reasons not infrequently unconnected in any way with the local welfare, — reasons connected rather with the exigencies of partisan politics. The condition of things which has resulted from this habit of the legislature is one about which there is no difference of opinion. Whatever differences of opinion there may be as to details in municipal organization, and that there are many with regard to most important details we must admit, all who have studied the subject agree on this point, that the continual interference of the legislature in purely municipal matters is gradually depriving the cities of the United States of almost all local self-government, so far as the determination of the policy of the municipality is concerned. In those states where such central interference has been most marked, the people of the cities have very largely lost interest in municipal government, and whenever they desire to see some concrete municipal policy adopted, their point of attack is the state legislature rather than

any local and municipal organ. Thus it will be remembered that in the city of New York, when it was desired to reform the system of cleaning the streets, most of the agitation which was carried on was carried on with the purpose of obtaining legislative rather than municipal action. In New York city the people have become so accustomed to this method of action that they regard it as perfectly natural and normal. The only fact which has saved us from a complete centralization, has been the existence of our historic decentralized administrative system, that is, our local self-government, to which attention will be directed in the next chapter. While legislative matters have been highly centralized, our administrative system, which was decentralized when we received it from England, has been further decentralized in its development in this country particularly through the adoption of the principle of local election, and through the grant to locally chosen municipal officers of functions of general government. The power of the local people to elect their own officers, is, indeed, protected by constitutional provisions in many states. While administrative decentralization may have accelerated the tendency towards legislative centralization, because of the fact that under such a system the legislature is the only guardian of the general interests, is the only body which may exercise any central control over cities, it has undoubtedly somewhat amelio-

rated our condition. For local administration of general legislation really means adaptation by local bodies of general laws to local conditions. As a necessary result local administration has had a part to play in the determination of municipal policy. It cannot be questioned that the giving of the power to local bodies, to administer a law which may be theoretically of general interest, really makes the law a question of municipal policy, as witness the attitude of local bodies towards the excise and prohibition laws. The determination of municipal policy thus practically put into the hands of municipal authorities, is, however, negative, rather than positive. That is, municipal authorities may practically, and do sometimes actually, refuse or neglect to enforce general statutes of the legislature which they regard as unsuited to the localities which they represent, but they cannot by any positive action enlarge or change the policy of the city, as this is determined by the statutes which delimit their competence.

This determination by the legislature, in detail, by means of special legislation, of the policy of the cities, it has been said, all are agreed is improper. The conviction of its impropriety is seen in the more recent state constitutions, a majority of which have forbidden special legislation relative to cities.[1] These constitutional provisions prohibiting special legislation relative to

[1] See, for details, Goodnow, *Municipal Home Rule*, Chap. V.

cities have proven almost complete failures. Their failure is due to the attitude which the courts have assumed towards them. Very generally the courts have held that the existence of such constitutional provisions does not prevent the legislature from so classifying municipal corporations that at the time the classification is made, only one city will be found in a class. The courts regard classification as necessary, believing that, without it, certain cities, peculiarly situated, would be deprived of all means of development.[1] The result is that legislation which is really special in its application, *i.e.* affects one city only, will, because it is general in form, *i.e.* may apply in the future to more than one city, be perfectly constitutional notwithstanding a constitutional provision forbidding special legislation regarding cities. In Ohio, which it is believed was the first state to adopt the rule requiring general legislation relative to cities, the failure of the provision is most marked. Hon. E. J. Blandin says:[2] "To exhibit the absurd length to which this vice of classification has been carried, under this unfortunate attitude of the Supreme Court of the state, I cannot do better than quote a few words from an address by Judge A. C. Voris, of Akron, recently delivered

[1] *Ibid.* See also Wheeler *v.* Philadelphia, 77 Penn. St. 338.

[2] In an article on the "Uniform Organization for Cities in Ohio," contained in the report of the "Minneapolis and Cleveland Conferences for Good City Government," p. 454, particularly on p. 455.

before a Committee of the Ohio State Board of Commerce. He said: 'Here is the way the last general assembly classified municipal corporations for the state — and, by the way, it is the second act of the same legislature for the same purpose. By act of March 13, 1894, amending the act of February 6, a law just five weeks old, municipal corporations are divided into cities, villages, and hamlets; cities are divided into two classes, first and second; cities of the first class are divided into three grades, first, second, and third; cities of the second class are divided into seven grades, first, second, third, third grade A, third grade B, fourth and fourth grade A; and cities of the second class, which thereafter become cities of the first class, shall constitute the fourth grade of the latter class; and villages which thereafter become cities, shall belong to the fourth grade of the second class.

"'This division is based upon the following numerical basis of inhabitants: First class, first grade, 200,000 and upwards; first class, second grade, more than 90,000 and less than 200,000; first class, third grade, more than 31,500 and less than 90,000; first class, fourth grade, cities advanced from second class thereafter; second class, first grade, over 30,500 and less than 31,500; second class, second grade, over 20,000 and less than 30,500; second class, third grade, over 10,000 and less than 20,000; second class, third grade A, over 28,000 and less than 33,000; second class,

third grade B, over 16,000 and less than 18,000; second class, fourth grade, over 5,000 and less than 10,000; second class, fourth grade A, over 8,330 and less than 9,500; villages, first class over 3,000 and less than 5,000; villages, second class, over 200 and less than 3,000.

"'An analysis of this classification will show that second class, third grade A, for all such cities having 31,500 inhabitants, and upwards to 33,000, are embraced in first class cities of the third grade, and all such cities having more than 28,000 and less than 30,500 are embraced in second class cities of the second grade; and second class cities of third grade B come wholly within cities of the second class, third grade; and all second class cities of the fourth grade A come wholly within the fourth grade of second class cities. The grades designated by the letters A and B constitute insensible grades, because by general law no city advances to a higher grade by force of the statute until the city shall have first secured the consent of its voters, given at an election had for that purpose. So that a reasonable classification based upon similar conditions can readily be accommodated to the wishes of the inhabitants who may remain at will or advance in grade as they may see fit, having the requisite population. The city of Akron might be a city of the first class, third grade, if its inhabitants wanted it, instead of being a city of the second class, third grade, as it

now is, and at the election of its inhabitants. I said Akron was recognized as a second class city of the third grade; it is so, nominally, but it has so many other hybrid grades applicable to it by special enactments, under the guise of general laws, that no man knows what laws are applicable to it. You may think this an extravagant statement, but for years our mayors, city solicitors, common councils, and other officers have radically disagreed as to its legal status, as caprice and partisan interest dictated, and acted officially accordingly.'

"The usual way of enacting forbidden special laws by this specious method of classification is illustrated by the following: 'That in cities of the second class, third grade, which at the Federal Census of 1890 had, or at any subsequent Federal Census shall have, a population of not less than 27,690 nor more than 27,720, the office,' etc., an attempted classification based on a difference of only thirty inhabitants, a condition not likely ever to arise for any other city, and if it did arise, furnishing no reason whatever why an office therein should be either created or abolished, or that the officer should be chosen for any different term of office or elected with any other different functions or powers.

"To everybody except the honorable judges of the Supreme Court this is a plain evasion of the Constitution, and to everybody except the partisan politicians who make use of the opportunity it

affords to jockey away a market inspector in Cleveland for a street commissioner in Cincinnati, and another plum in Toledo for still another in Columbus, by using the general assembly to authorize the deal, it is as humorously absurd as it is deeply to be regretted by all honest people.

"In this long list of classes and grades of cities, thus sanctioned by the Supreme Court in an evil hour, there are as many different forms of organization as there are grades and classes. No two are alike, and no one of them all is likely to remain as it is through the next session of the legislature. With each recurring election partisan interests will see a way by which some official can be displaced by a special act and another appointed by some local or state authority friendly to the aspirant for the place thus made vacant. This is done repeatedly without the knowledge of the people of the city affected, and without the knowledge or care of any member of the general assembly except those locally concerned, and all in compliance with a constitutional provision, which requires the act to be uniform throughout the state."[1]

The peculiar form in which the constitutional provisions of Ohio were put, was undoubtedly partially responsible for the attitude of the courts; but it is as undoubtedly true that the needs of

[1] See also Wilcox, *Municipal Government in Michigan and Ohio*, p. 72 *et seq.*; *Columbia College Studies in History, Economics, and Public Law*, Vol. V.

cities actually required special legislation. The fact that the courts of other states, when called upon to construe similar constitutional provisions, similar at any rate from the point of view of their purpose, reached the same conclusion,[1] is evidence that in the present state of our law, constitutional provisions absolutely prohibiting special legislation relative to cities are impracticable. The reason why they are impracticable is that in almost all cases the powers conferred by general municipal corporations acts passed in pursuance of such constitutional provisions are either inadequate or are enumerated in such detail that changes in them in the case of particular cities are absolutely necessary if municipal government therein is to be carried on satisfactorily. Here the experience of Ohio is very instructive. The law passed in 1852,[2] to which reference has already been made, sinned in these two particulars. Judge Dillon[3] calls attention to the fact that the powers and privileges of the bodies formed by this act were "specified with great minuteness, twenty sections of the act being devoted to this purpose." Further, a perusal of the act will show that the extent of the financial powers given to cities, upon which will depend the actual extent of their municipal powers, as has been

[1] See Goodnow, *Municipal Home Rule*, Chap. V.

[2] Act of May 3, 1852.

[3] In the third edition of his work on *Municipal Corporations*, on p. 57, Note 1.

shown, was very narrow. The power to tax was indeed given, but was seriously limited. The power of local assessment was also given, but was also subject to serious limitations, while the power to borrow money was not recognized at all, except in anticipation of revenue, and never to exceed certain specified amounts. An examination of the special legislation passed afterwards, will show that by far the greater part was due to the necessity of applying to the legislature for further financial, particularly borrowing, powers, whose exercise was absolutely necessary if undertakings necessary to the welfare of the cities concerned were to be entered into. Thus, from 1876 to 1892, 594 out of 1202 special acts affecting cities and villages conferred power to borrow money; while 1124 of the 1202, or over ninety-three per cent, conferred financial powers. Sixty of these permitted the levy of special taxes, and 470 the transfer of funds.[1] General municipal corporations acts are then impracticable, so long as the principle of enumerating powers, narrow in extent, is adhered to. The imperious demands of specific cities will override all constitutional provisions requiring general municipal corporations acts.

But are we then to abandon the idea of general acts, and reconcile ourselves to the régime of special acts which, it has been shown, are so fraught with evil? Such a step does not seem to

[1] Wilcox, *op. cit.* p. 79.

be necessary. The experience of France, Prussia, and England, which, in the order named, adopted the principle of general municipal corporations acts, and whose successful experience in municipal government has been so exhaustively described by Dr. Albert Shaw,[1] would seem to indicate that such a conclusion is not only unnecessary, but would actually be the wrong one to make. While the adoption of these general municipal corporations acts on the continent was either the means by which the crown realized its purpose to subject all cities to the central power, as in France, or consequent upon the assumption of power over them by the central government, as in Prussia, the actual, final result of their adoption was both to confer upon cities a large measure of home rule in purely local matters, and to provide a method by which the general system might be adapted to local conditions. In Prussia this result was reached first. This was accomplished in the Municipal Corporations Act of 1808, which, framed by Baron Stein, was strongly influenced by English principles of local self-government. In France, where the Napoleonic centralization retarded the development, the result was not reached until the passage of the Municipal Code of April 5th, 1884.[2] In England

[1] *Municipal Government in Great Britain* and *Municipal Government in Continental Europe*.

[2] For a translation of this act, which, apart from the provisions relative to local autonomy, was a consolidation of an act of 1800

the development was somewhat different. There the mediæval municipal corporations never had the same powers as were possessed by the continental cities of the same period, owing to the greater centralization in Parliament of all legislative matters, to which attention has been called. Further, their connection with the central politics of the country had quite early in their history incapacitated them for the performance of administrative work. As Dr. Shaw well says:[1] "Their character as parliamentary constituencies tempted the arbitrary Tudor sovereigns and still more their successors, the Stuarts. It was for the interest of these sovereigns to restrict the corporations to the smallest membership, to make them as close and non-representative as possible, and to bring them, by every available means, under royal influence and control. The course of their degeneration is a long story, the details of which are different for each town. But the principle at work was usually the same. The immediately governing body in most towns gradually became a handful of men forming a close, self-perpetuating corporation. In many instances the crown packed the town governing bodies with honorary non-resident freemen.

together with its amendments, see the appendix to Shaw, *Municipal Government in Continental Europe*. As the latest general municipal corporations act, and because of its large grant of local power to cities, it is deserving of careful study.

[1] *Municipal Government in Great Britain*, p. 23.

The corporations of men chartered to rule the communities became less and less representative of the mass of the town dwellers, and more and more irresponsible." The reform came, however, in 1835, when a general act was passed whose purpose was to restore to the people of the cities the powers which had been usurped by narrow cliques of persons more interested in national politics than in municipal development.

Why is it now that general municipal corporations acts have worked successfully on the continent and in England, and have not been successful in this country? The reason of their success on the continent is apparent, and is to be found in the fact that the local powers conferred on cities are not enumerated, but are to be found in a general grant. The most notable example of this is to be found in the French Municipal Code of 1884. In Article 61 is contained the grant of power, which is as follows: "The municipal council regulates by its deliberations the affairs of the commune." The same is true of the Prussian municipal corporations acts.[1] In other words, the continental municipal corporations acts are general in more senses than one. They are not only general in that they apply to all cities; they are also general in that they do not descend into much detail as to the competence of the corporations which they establish. To us, who are accustomed to the

[1] See Goodnow, *Municipal Home Rule*, p. 252.

enumerated powers given to our cities by our state legislatures, this idea is difficult to grasp. Further, with our preconceived ideas in favor of legislative centralization, which are based on long centuries of experience, such a method of distributing powers seems dangerous. It must be remembered, however, that such a general grant of power does not erect a city into an *imperium in imperio*, for the grant of power is only as to the "affairs of the city." It does not in and of itself confer any powers of a general character, which are still possessed by the state government; but it does insure to the cities a large measure of local autonomy, so far as the determination of mere municipal policy is concerned. Under such a system what are local and what are general affairs must, of course, be determined; and such a determination is reached by a consideration of the entire administrative law. If any provision of that law confers a specific power upon some other authority than a municipal council, whatever may be the theoretical nature of that power, it ceases to be a municipal power, and as such within the competence of the municipal council. But as a result of this method of determination, it may be said that the city is an authority of general, rather than of enumerated powers. This, it will be admitted, is a very important step taken in the direction of local autonomy, particularly as the power of fixing the details of the municipal organization is vested almost completely in

the council and the municipal executive elected by it. That is, each city, through its organs provided by the general act, can adapt the general scheme to its own peculiar local conditions. The extraordinary elasticity of such a scheme is brought out most emphatically when attention is called to the fact that the French act of 1884 applies in its general provisions not merely to all cities but also to all villages and townships, and that it has worked satisfactorily in both cases for more than three-quarters of a century, the general plan of the act of 1884 having been taken from an act of 1800. But a further perusal of the act of 1884, as indeed of any of the continental municipal corporations acts, will show that the municipality is not allowed absolutely free hand, either in the management of its finances or in the discharge of its functions as an agent of the state government. In these cases, as also in a few others, it is subjected to a central control, the character and extent of which will be considered later.

In England, conditions are somewhat different. Although a general municipal corporations act was adopted in 1835, and has been retained up to the present time, being re-enacted, with the amendments made to it in the mean time, in 1882, it can hardly be said that the success which has attended the English system of municipal government has been due to any general grant of local power contained in the act. The idea of legislative cen-

tralization and enumerated local powers was too deeply imbedded in the English mind to permit of the adoption of such a method of granting local powers. The English cities still remained, under the act of 1835, as they were before its passage, authorities of enumerated powers, and the needs of special and particular cities have made it necessary to encroach somewhat on the general act, which has been modified in its application to specific cities by the passage of considerable special legislation.[1] Further experience has proved that the powers granted by the general act were in many cases in-

[1] See De Franqueville, *Le Parlement et le Gouvernement Brittaniques*, Vol. III, p. 206. It is said here in a foot-note that since the year 1800, two hundred and fifty special acts have been passed relative to the city of Glasgow. On page 207 the author calls attention to the necessity of special legislation under the English system of enumerated powers, in the following language: "Thus local authorities are obliged to have recourse to the legislature just so soon as they wish to act outside of the comparatively narrow sphere of their ordinary powers." Again, on page 206, he says: "Much is said, and with reason, of the system of decentralization which leaves to local authorities so much freedom of action; but it is too often forgotten that there is a central control, that is, the power which is reserved to the legislature. A mayor is independent of the executive power to a very large degree, but neither he nor his municipal council can authorize a company to open a street of the city to put their gas pipes or water pipes there. The Metropolitan Board of Public Works of London could not place upon a pedestal an Egyptian obelisk which was offered to it, nor bind itself to maintain this monument, without obtaining a private bill; and when it asked for authorization to accept, in the future, gifts of this character, and the power to maintain them, Parliament absolutely refused its permission," citing act of 35 and 36 Victoria, Chap. 91.

adequate, and as the experience of particular cities has proved that they were inadequate, new and greater powers have been granted to such particular cities by special acts, so that, strictly speaking, the experience of England has been the same as that of this country. General municipal corporations acts, so long as only narrow local powers have been granted, and so long as such powers were enumerated, have shown themselves to be inadequate. The English law has not been reduced to the absurd condition of the American law in this respect, as seen in the law of Ohio, because the English Parliament was nowhere forbidden to pass special acts. But while special legislation relative to cities has not been uncommon since the passage of the general act of 1835, several things have tended to prevent it from having the evil results which it is generally believed to have had in this country. In the first place, the general municipal corporations act does not determine in detail the organization of the city, but leaves that to be worked out by the city councils themselves. That is, with very few exceptions, the city councils determine what city offices shall be established, and how they shall be filled. As to the details of municipal organization, the English act resembles the continental acts in giving general organizing powers to the city councils. In the second place, as new needs have shown themselves from the experience of

particular cities, Parliament has as a result of such experience passed a series of "Clauses Acts," as they are called, into which are incorporated general principles relative to particular subjects needing frequent regulation by special legislation. Since their passage special legislation has largely consisted in applying the particular "Clauses Act" which was applicable to the particular city desiring the increase of powers.[1] In the third place, such rigorous formalities are required by the general orders of Parliament for the passage of private bills, formalities compliance with which causes great expense, that not only are private bills most carefully considered and the interests of all persons, including the municipal corporations themselves, affected by them, safeguarded, but also they are not brought before Parliament unless the necessity for them is very urgent.[2] It is to be noted, also, that in England, the establishment of a more centralized administration — the grant of large powers of control to the central administrative authorities over the local authorities, including among them authorities which would in this country be regarded as municipal authorities — has enabled Parliament to roll off a great deal of work on the

[1] See De Franqueville, *Ibid.* Vol. III, p. 126, where it is said, in note 2, that in 1856 clauses from such acts had been incorporated in more than 3000 acts, and saved the reprinting of as much as 130,000 pages of matter.

[2] *Ibid.* p. 20.

administration. Thus the Local Government Board has at the present time to give its approval before most of the cities can borrow money. The exercise of this power by this board makes unnecessary a large amount of special legislation.[1] Finally, it is to be remembered that the English city is much more a local organ than is the American city; and that many matters of central concern which are in the United States attended to by the city as agent of the state, are attended to in England by the central administrative authorities directly, or under their immediate supervision. Thus in England the city administration proper never attends to the schools and public charity, and while it attends to police and public health, acts there under a strong central administrative control. The legislature thus does not have to exercise in the interest of the state as a whole any control over the city's management of such matters, as is the case in the United States, but the necessary control is exercised by the administration. The temptation to interference in municipal matters is therefore not nearly so great as here, and the attitude of Parliament towards the cities is quite different from that of our state legislatures.

Our comparison of the way in which the competence of the city and its authorities is determined in the United States and Europe shows then

[1] See *supra*, p. 47, as to the amount of special legislation necessary to permit cities to borrow money.

that there are great points of difference between the American and European methods. Further, the failure of our attempts to regulate cities by general acts would seem to be very largely, if not entirely, due to the principle, almost universally applied here, of enumerating in detail the cities' powers. Finally, many of the evils of special legislation would seem to be due to our failure to surround the passage of special acts with sufficient formalities to insure their full publicity, and that all interested in their passage shall have a chance to be heard.

So far we have considered merely the method by which the sphere of municipal competence or activity is delimited. A few words must be said about the content of that sphere. Here, however, we are met by great difficulties. The city is, as has been pointed out, essentially a governmental rather than a business corporation. It is true that a large part of its work is local; but it is not the less governmental. That is, the city is acting in the interest of that portion of society of which it is composed and not for the purposes of private gain. For this reason much property, such as water works, which legally belongs to the city so fully that it may not be deprived of it by the state under our system of constitutional restrictions without giving it compensation or obtaining its consent,[1] it is still so governmental in character

[1] Webb *v.* The Mayor, 64 Howard's Pr. 10.

that it may not be sold on execution, even in those states which permit execution in case of the business or private property of municipal corporations.[1] In other words, a function of municipal government which from one point of view is regarded by the courts as *quasi*-private is treated from another point of view as *quasi*-governmental. From one point of view it is governed by the rules of the private law, from another point of view, by the rules of the public law. The difficulty of delimiting satisfactorily the sphere of municipal competence has been apparent to the courts. They are unquestionably inclined to regard all work which is actually attended to by city officers as within the sphere of municipal activity, whether it is theoretically so or not.[2] This tendency is undoubtedly due to the long-continued existence of our decentralized administration. As has been pointed out, while all legislation is considered to be a part of the general business of the state, almost all administration of state legislation has been regarded as local in character. Thus even police officers have, from the point of view of the power of the legislature to provide for their central appointment, been regarded not infrequently, though still not universally, as local officers.[3] A consideration of the general law of municipal corporations

[1] See New Orleans *v.* Morris, 105 U. S. 600.

[2] See, for example, Horton *v.* Mobile, 43 Ala. 598.

[3] See People *v.* Albertson, 55 N. Y. 128.

will, it is believed, lead to the conclusion that the safest guide in the determination of the competence of cities is to be found in the attitude of the courts relative to the liability of municipal corporations for torts; for nowhere in this branch of the law is the distinction more clearly made between the public and the local functions of cities. As to this matter, the courts have held that the sphere of local action is to be found merely in the action of the city in undertaking and maintaining public works, such as water works, streets, bridges, sewers, etc., from whose management either pecuniary gain or peculiarly local advantage is to be derived.[1] They therefore generally hold municipal corporations liable for negligence in the performance of duties connected with these branches of municipal administration in about the same way as private persons are so held liable. It is not intended to assert that all of the decisions on all of these subjects are in harmony, but merely that some such general conclusion may be arrived at after a consideration of them. Nor is it intended to assert that even if it is admitted that such is the true sphere of municipal activity it is a sphere upon which the legislature may not encroach. The old principle of legislative omnipotence and centralization has still too great an influence on the law to permit that idea to be entertained. In some instances the cities are pro-

[1] Goodnow, *Municipal Home Rule*, p. 229.

tected from legislative interference by constitutional provisions; in the great majority of cases they are not. All that is meant by this statement is that where cities are acting in these directions the courts will apply to them the rules of the private law rather than those of the public law, considering them rather as assimilated to private corporations than as governmental authorities, and certainly laying great emphasis on their local characteristics. Where they are acting in other directions, as, for example, in preserving the peace, caring for the public health and safety, either through the adoption or enforcement of local police ordinances, supporting the poor, educating the ignorant, or collecting revenue either for the use of the state or for their own use, the courts, on the other hand, consider cities as agents of the state government and subject to the rules of the public rather than the private law. The cities are not therefore liable for negligence in these connections any more than is the government of the state liable. In making this distinction between the corporate or private and the governmental or public functions of cities our courts follow very closely the principles on which the central control over foreign municipalities is based. In Europe the ground of distinction between public and governmental and local and municipal work is to be found in the central control exercised over the city. Where the supervisory authorities are per-

mitted to interfere with the discretionary actions of municipal officers it will be found that those actions almost always relate to functions of interest to the state at large, and are almost identical with those acts of American cities which our courts hold they perform as agents of the central state government.

The agreement the world over on this matter is so marked that one can hardly refrain from feeling that a constitutional provision protecting the sphere of municipal activity as above described would be effectual. But it must be remembered that it is extremely difficult to foresee all the difficulties which would be likely to arise. Our experience of constitutional provisions relative to cities has been so unfortunate that expectations of their efficacy cannot as a general rule be very strong. In any case it is certainly true much good would be done, a long step would be taken in the solution of the municipal problem in this country, so far as the determination of the city's relation to the state government is concerned, if the courts would abandon the principle of strict construction of municipal powers.[1] Much good would also be done if the state legislature would abandon the method of enumerating the powers of municipal corporations, and adopt the continental plan of a general grant

[1] A late case in Indiana, viz. Crawfordsville *v.* Braden, 130 Indiana, 149, 30 American State Reports, 214, shows a decided tendency towards broad construction.

of municipal power in general municipal corporations acts, stating specifically in its legislation what powers are to be exercised by other than municipal authorities, or if when exercised by them are to be subject to central control, leaving to the courts to determine whether specific powers assumed by cities have been properly assumed — are, in other words, municipal in character. The decisions in the case of torts by municipal corporations are, so far as the general principles are concerned, so clear and so in harmony one with another that it seems as if the courts would have little difficulty, with the help the legislature could give, in its determination of the nature of specific powers, in working out a satisfactory delimitation of the sphere of municipal competence. Such a delimitation it is believed might be obtained from a careful consideration of the decisions already made in the law of municipal corporations.

The grant of greater local powers to cities, whatever may be the method by which the grant is to be made, will necessitate the formation of some sort of control over them. The reasons for the establishment of such a control, and the functions discharged by municipal corporations which should be subjected to it, will be discussed in the next chapter.

CHAPTER IV

THE RELATION OF THE CITY TO THE STATE

The city, and particularly the American city, is not only an organ for the satisfaction of local needs; it is in many cases a most important agent of the state government, and municipal officers are not infrequently called upon to attend to matters which interest the citizens of the city only as they are citizens of the state — matters which do not directly interest municipal government proper at all. While originally the English municipal charters laid great emphasis upon the purely local duties of cities, the American state legislature has, as a result of our policy of administrative decentralization, — our local self-government, as we call it, — gradually come to regard cities more and more as agents of public government, putting into their hands a great number of matters which are not peculiarly local in character, and conferring upon them or their officers a large number of essentially governmental powers, such as police and taxing powers, and powers relative to the state and national elections, the administration of justice, the school administration, and the support of the poor. In so far as the city is thus made the

agent of the state, the state must see to it that the city discharges its duties and discharges them properly. The state cannot, with due regard for its safety, permit municipal corporations or their officers free hand in the discharge of such functions. For if anything is proven by English and American administrative history, it is that uncontrolled local administration of general matters both leads to great lack of administrative uniformity and harmony, where uniformity of treatment is necessary, and is both slovenly and inefficient. The most noted example of this fact is to be found in the administration of the English Poor Law of the seventeenth century. The evils which resulted from the way in which local authorities administered this law are too well known to make anything more than a mere reference to them necessary. We have, however, nearer home an example of the inefficiency of uncontrolled local administration of laws regarded as of general interest, in the case of the prohibition and excise laws in the United States. In the case of the English Poor Law, the local authorities, which were the Justices of the Peace, made use of the large discretionary powers granted to them in the interest of the locality they represented, totally disregarding the interests of the state at large. In the case of prohibition and excise laws, local, and particularly municipal, authorities in the United States have very commonly refused or neglected to exercise powers regarded

by law as purely ministerial, where they have considered the enforcement of the laws to be contrary to the interests of the communities they represented, or the laws themselves as opposed to the feelings of the local inhabitants. Whether local authorities act rightly or wrongly in such cases is not to be determined here. It is undeniably the fact, however, that this is the attitude they assume.[1] Other instances of the inefficiency of a purely local government, due either to positive intention, or to neglect of local authorities in the administration of matters of general interest, might be cited. But it is believed that what has been said is enough to show that if uniformity of administration of matters of general interest is needed, uncontrolled local administration of those matters is not the way to obtain it.

Further, a control over the financial administration of municipalities is necessary. Thus the exercise of the taxing power and the power of local assessment should be subjected to central control. For such powers are essentially governmental powers, and their uncontrolled exercise by municipal authorities, which in our present municipal conditions need to raise large amounts of money,

[1] See an interesting and impartial article by William McDonald on "Prohibition in Maine," in the *Evening Post*, New York, January 25th, 1896, where it is said, and this would seem to be the point of the article: "That a certain appreciable degree of violation of the law is expected, and public feeling is aroused only when that normal point is reached."

might seriously derange the general finances of the state. Not only should the kinds of taxes and assessments which may be levied by local authorities, be specified, but the way in which such levies may be made should be determined, for the exercise of the power to tax is a way both of depriving the citizen of his property and of regulating his occupation. A great deal might be said in favor of having the central government of the state not only specify the kinds of taxes which may be levied and the way in which they shall be levied, but also fix the rates of such taxes, so that some limit may be imposed upon the amount of money which may be demanded by the municipalities of the local taxpayers. For in the social conditions obtaining in modern cities property is so unequally distributed that a small proportion of the people who, with universal suffrage, vote the municipal taxes, feel their burden directly where a system of property taxation is adopted. Theoretically the same reasons do not exist for limiting the borrowing power of municipal corporations. That is, a condition of things can be conceived of where the exercise of the power to borrow money will have no influence upon the interests of the state as a whole. This is the case where a city has a large amount of revenue-bearing property which may be pledged as security for the loan, and where the loan is not therefore to be paid out of the proceeds of taxation. This, perhaps, accounts for the

rule of the American law, that while a municipal corporation may not impose a tax without special authority, it may borrow money. But such is not, as a matter of fact, the condition of most American cities, or, for that matter, of most cities in any part of the world. Persons who loan money to municipal corporations must as a general thing look to the exercise of the taxing power as the means by which the money will be raised which will go to pay the city's debts. Therefore very generally there are the same reasons for limiting, by the action of the state government, the city's power to incur indebtedness, as its power to tax; and very generally, as a matter of fact, the power of cities to borrow money is subjected to some sort of central control. Indeed, the courts of the United States hold on this account that the taxing power is indirectly exercised by cities when they borrow money, and that therefore limitations of the taxing power are limitations of the borrowing power as well.

Such are the functions of municipalities which must in a well-ordered system of municipal government be subjected to a central control; and it will be noticed that, on account of the fact that municipalities are dependent for their necessary resources on the exercise of public powers, that is, the taxing and the borrowing powers, this control may, if care is not taken in its formation and in the manner of its exercise, very easily be extended

unduly, so as to deprive cities of that sphere of municipal autonomy which they must have if we are to expect any great municipal development and the existence of great municipal public spirit. Indeed, the development of the public character of American cities has had the result in our system, which does not make a clear distinction between local and central powers, of subjecting the city in its purely local concerns to a very large central control. The central control properly exercised over them by the legislature, so far as they were state agents, has been easily and quite naturally extended — naturally, for the reasons indicated in the last chapter — to their purely local matters. It becomes, therefore, a matter of the greatest importance so to organize this central control as at the same time to safeguard the interests of the state as a whole, and to preserve as free as possible from encroachment the cities' freedom of action.

How, now, may this important problem be solved? It is unquestionably true that in many cases the interests of the state may be safeguarded by subjecting municipal corporations to the same control to which all persons and public authorities are subjected. Thus the mere fact that cities are incorporated subjects them as juristic persons, and therefore subjects of the private law, to all the applicable rules of the private law. The fear of being mulcted in damages for breach of contracts made by them and for the commission of tortious

acts will undoubtedly tend to keep them within the limits assigned by the law of the land to their sphere of action. Again, as public authorities, *i.e.* as subjects of the public law, municipal corporations and their officers may be subjected to the jurisdiction which the courts possess, in our system of judicial control of administrative action, over the acts of all public officials. The mere fact that municipalities are corporations, that is, juristic persons, and at the same time public authorities, will thus, in many cases, obviate the necessity of forming any special means of control over them. Further, their officers as public officers will be subjected to the control which the criminal courts possess over all public officers. On account of the emphasis which is given in our decentralized system of administration to the judicial control, this control is theoretically a very large one. But, on account of the fact of the popular and local character which the existence of our jury system and the local election of the judges give to the control of the criminal courts and to a certain extent to that of all the courts, this control becomes practically useless as a means of safeguarding the interests of the state as a whole, if there is serious conflict between the state and the localities. Whatever may in theory be the power of the jury to judge of the law as well as of the facts in criminal cases, the interpretation which has been put on the constitutional provision that no man shall be put

twice in jeopardy, has brought it about that as a matter of fact acquittal by a jury of a prisoner, contrary to the instructions of the judge, is usually unappealable, and that the jury is thus supreme. In other words, the supposed central control of the courts is in many cases, particularly in the case of crimes, really a local control and is not uncommonly exercised more in the interest of the locality from which the judge and the jury come than in that of the state at large. This has been our experience in enforcing the prohibition law. It is said that, when a few years ago an attempt was made in Maine to punish illegal selling of liquor, by both fine and imprisonment, the juries refused to convict; and a judge of one of the state courts is reported to have said that to imprison a well-known and respectable citizen for violating the liquor law would in many cases almost provoke a riot.[1] The control of the criminal courts, and in some cases also of the civil courts, cannot, where there is great difference of opinion between the state as a whole and a locality, be counted on to accomplish much in the interest of the state. Further, the courts are as a whole unsuited to exercise all the central control over cities which is necessary. This is so because the judicial control is exercised mainly in the interest of the maintenance of existing law, while the central control must, in many cases, to be efficient, be exercised more from

[1] *Prohibition in Maine, loc. cit.*

the point of view of expediency, than from that of insuring legality in the action of local bodies.

In the United States, after English examples, this judicial control has been supplemented by the legislative control. The legislature has large powers of control over the concrete actions of municipalities. The one great characteristic of the original English and American administrative system was the allegiance of all officers to the statutes of the legislature.[1] The system of administration was so decentralized, particularly in its American development, that the subjection of local officers and authorities to the control of the central administration was out of the question. There being no opportunity in such a system for central administrative instructions, the duty of issuing such central instructions as were necessary devolved upon the legislature, which in its statutes descended into the most minute details. As a French writer, Mr. Arminjon, who has recently written on English local government,[2] says, "Parliament has placed the local authorities within very narrow limits, permitting them to exceed them only with its own authorization, accorded by special acts. English legislation does not contain any of those 'juridical monuments' [*monuments juridiques*] drawn up in a few short

[1] See Freund, "American Administrative Law," *Pol. Sci. Quar.* IX, pp. 403, 409.

[2] *L'Administration Locale de L'Angleterre*, p. 253.

paragraphs, in concise style, and intended to announce principles, whose application some minister is called upon to make, and whose consequences he is to bring out. On the contrary, at the expense, it is true, of great prolixity and fatiguing repetitions, it attempts always to foresee all difficulties, to settle in advance all controversies, and in this way to take away from the agents of the government charged with its execution, all pretext for arbitrary action." We are in the habit of calling this system of government a decentralized one. It is decentralized, however, only from the administrative point of view. It involves a great deal of legislative centralization.[1] Hence the system of special legislation about which so much has already been said, and which, as at present organized in the United States, is attended, all are agreed, by so many evils. As has been pointed out, the attempt made to do away with special municipal legislation by constitutional provisions requiring the legislature to pass general municipal corporations acts has practically failed, and failed because special municipal legislation was, under our system, positively necessary. Such special legislation was necessary, first, because of our system of narrow and enumerative municipal powers; particularly because of the narrow financial powers recognized

[1] See the remarks of De Franqueville, *op. cit.*, p. 206, *supra*, p. 53.

as possessed by municipal corporations. This reason for special legislation, it is believed, would be almost completely removed by the adoption of the continental principle, that cities have general powers of local action, and will certainly be rendered much less strong by simply widening municipal powers relative to local matters. Special legislation was necessary, in the second place, to safeguard the interests of the state as a whole. It was the only means, in a decentralized system of administration, by which a large part of the necessary central control could be exercised. Thus there being no opportunity in our system of administration for requiring the approval of an administrative officer in order that a city might borrow money or levy taxes, the legislature of the state had to pass statutes giving its permission in special cases or in classes of cases. The legislative control has, however, shown itself to be an inefficient means of control. The exercise, by the legislature, of its control over the borrowing power of municipalities, has been of such a character as to show that little reliance is to be placed upon the legislature to prevent unwise municipal action. Indeed, at the present time many state constitutions themselves fix the amounts cities may borrow.[1] The legislative control also, as has

[1] As to the inefficiency of the legislative control in this respect, as compared with a central administrative control, see Arminjon, *op. cit.*, p. 215.

been pointed out, has, on account of its too frequent and indiscriminate exercise, all but destroyed local autonomy.

While constitutional provisions prohibiting generally special legislation in relation to cities have failed to accomplish what was expected of them, it is still true that constitutional provisions which recognize the city as possessing certain rights of which they may not be deprived by the legislature, are of some use in preventing this destruction of local autonomy. Such, for example, are the provisions giving to cities the right to elect directly or indirectly their own officers.[1] Such are also the provisions which recognize that cities possess certain rights in the nature of property rights in the streets. One of the causes of the most frequent violation of the principles of municipal home rule is to be found in the power of the legislature over street franchises. The rule adopted by the courts as to the absolute control of the legislature over streets and their uses has made it possible for the legislature to grant street franchises without consulting at all the wishes of the cities. In this way in the early part of our municipal history a large proportion of the streets in cities were given over to private corporations which obtained the right to lay car tracks and gas and water pipes without making any compensation to the cities for the

[1] See in the case of Detroit and of the cities in Michigan, Wilcox on *Municipal Government in Michigan and Ohio*, Chap. III, p. 35.

privileges they thus obtained. This use of the power of the legislature over cities has, however, been generally recognized as improper, and most of the later constitutions recognize that streets are really municipal property, in the disposition of which the cities shall have something to say, and it is generally admitted that the abuses relative to the grant of street railway franchises by the legislature which existed before the passage of such provisions have been largely remedied. But while certain specific abuses, like the central appointment of municipal officers, and the profligate granting of street railway franchises by the legislature, may have been largely remedied by the adoption of specific constitutional provisions, the general system of special legislation, with its attendant evils, has not been changed by the later state constitutions forbidding generally special legislation; and has not been changed, because special legislation was absolutely necessary under a system of enumerated powers and administrative decentralization.

The adoption of provisions forbidding special legislation for cities was not, however, a leap in the dark. Those who secured their adoption had reasons for supposing that they would be successful. Special legislation relative to a large number of private rights had been previously prohibited. The legislature was thus very generally forbidden by the constitution to grant divorces by special

act. There is hardly any one at the present time who would advocate a return to the former system. Why, now, has the prohibition of special legislation been successful in one class of cases but unsuccessful in another? The reason is not far to seek. In the one class of cases, of which the matter of divorce is a good example, it was recognized that special action was necessary, and provision was made for some authority by which it might be taken. That is, the legislature passed a general law providing that the courts, in the proper cases, and for certain specified causes, might grant divorces in concrete and special instances. In the case of special legislation as to cities, however, it was not recognized that special action was necessary, and no provision was made for it. No authority was provided which under the general regulation of the legislature could take the necessary special action. The result was that the pressure on the legislature for modification by special legislation of the laws relative to cities, which, it will be remembered, descended into great detail, was as great after as before the adoption of the constitutional provisions prohibiting special legislation. To this pressure the legislature was obliged by the force of circumstances to yield, if municipal government was to be advantageously carried on. It may be said that the legislature might have and should have, if it had desired to carry out the wishes of the people in making the constitutional

provisions, relegated the matters whose determination needed special action, to the cities themselves for settlement. This it might unquestionably have done where the questions concerned were purely local in character. But it must be remembered that purely municipal questions have not as yet been clearly differentiated; that the tendency, not only of the people as a whole, who were represented in the legislature, but also of the courts themselves, which were called upon to make this differentiation, was, when looking at the matter from the point of view of the control of the legislation, to regard everything within the administrative competence of cities, as fixed by law, as municipal in character. With this very wide conception of local powers, which resulted from our ideas of local self-government, the effect of delegating to the cities the power to regulate absolutely, and subject to no central control, the matters entrusted to their administration, would have been the destruction of almost all state unity, and the establishment of *imperia in imperio*. This step the legislature was naturally unwilling to take. We must remember also that the tendency of municipal development, certainly in the larger cities, has been in the direction of weakening of the position of the city council, which was the body in the municipal government to which such a delegation of local powers would naturally have been made. Finally, it must be borne in mind

that the principle of centralization of all matters under the state legislature which we have inherited from England, with its traditions of a theoretically omnipotent Parliament, almost completely denied local autonomy, and had resulted in the adoption in our law of the principle that the powers of municipal corporations were enumerated and were to be strictly construed. These considerations made it practically impossible for the legislature to take any other position than the one taken, unless the traditions of centuries were to be abandoned.

Special legislation is thus practically unavoidable in our decentralized administrative system. It certainly cannot be avoided by mere constitutional prohibition; and the reason of the failure to prevent special legislation by constitutional prohibition is to be found in the fact that some special action is absolutely necessary. If special action on the part of the legislature is prohibited, provision must be made for special action by some other authority. If such other authority be provided, our experience shows us that special legislation will cease, or at any rate become very much less common than it is at present.

It has been pointed out that the experiences of the early part of this century forced the conclusion that the legislature was not the proper body to determine in special cases a long series of matters. Many of these, like divorce and the change of

names, were regarded as matters which should be determined by judicial bodies. Therefore in some states the constitution, but in others the legislature itself, provided explicitly that these matters were to be attended to by the courts, acting under the general direction of the legislature, to be expressed in general law. In other cases, however, the fitness of judicial bodies for the performance of the necessary special action was not so marked. For a series of these matters, like the organization of private corporations, administrative authorities seemed to be the proper bodies for the exercise of such powers. Therefore it was provided that certificates of incorporation should, in the class of cases laid down in a general way by the legislature, be granted by some administrative body, which was given pretty wide powers to determine in concrete cases whether the conditions required by the legislature had been complied with.[1] In all of these cases it is generally considered that the prohibition of special legislation has been successful; and in all of these cases it will be noticed that the constitution or legislature, in following out its mandates, did not consider that the mere prohibition of special legislation was enough, but the further

[1] See People *v.* Nelson, 46 N. Y. 477, where *mandamus* was refused to force the Secretary of State to file a certificate of incorporation, previously approved by a judge of the Supreme Court, where the secretary believed the corporation to be formed thereby was not formed for one of the purposes for which by the statutes corporations might be formed.

step was taken of providing some authority which might take that special action which it had been recognized must be taken in order to regulate those matters needing special regulation. In the case of constitutional provisions prohibiting special regulation of municipal affairs, it has seldom been the case that such authorities have been provided. The necessary central control over municipalities had, after as well as before the adoption of the constitutional provisions prohibiting special legislation, to be exercised by the legislature; and as such central control had, in order to be effective, to be special in character, the legislature was forced to pass a large amount of special legislation, an amount almost as great after as before the adoption of the constitutional provision theoretically prohibiting it. What our American experience teaches us, then, is that in order to do away with special legislation, provision must be made for the exercise of the central control over cities, which we have seen is necessary, by some authority other than the legislature. In some instances it is unquestionably true that this authority may be a court. The New York constitutional amendment of 1875 is a good example of the success attending such a method. By this it is provided that no "law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on,

and the consent also of the local authorities having the control of that portion of the street or highway upon which it is proposed to construct or operate such railroad, be first obtained. Or, in case the consent of such property owners cannot be obtained, the General Term of the Supreme Court in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated; and their determination confirmed by the court may be taken in lieu of the consent of the property owners." This amendment has now been in force over twenty years, and up to the present time no demand has been made for its repeal or modification. The work done under it has been in almost all instances satisfactory, the judges having confined themselves for the most part to protecting the rights of owners of private property who have not consented to the operation of the road. But it is certain that we cannot rely entirely upon the courts for the exercise of this control; for, as has been pointed out, the courts are by nature adapted more to the performance of the duty of forcing all persons within their jurisdiction to obey the law, than to exercise political duties, as, for example, the determination of the expediency of taking concrete measures. In so far as we demand of the courts the performance of such political duties, we neces-

sarily introduce politics into the administration of justice, which is always to be deprecated. It would seem, therefore, that other than judicial authorities should exercise the central control which is so necessary. Not only our own experience in such matters as the incorporation of private corporations, but also European experience, would seem to indicate that the proper authority to exercise such control over the localities, particularly the municipalities, is some administrative authority. But, except in a very few instances, such a method of solving the problem seems hardly to have occurred to us. This is the more remarkable because the administration of the national and the general state governments has tended within the last forty years to become more and more centralized. The national administration has been completely centralized, while those new branches of activity which the state government has been obliged, on account of the greater complexity of modern social conditions, to enter into, have almost invariably been put into the hands of the central administrative organization of the state government. Thus such matters as railway supervision, factory inspection, supervision of certain agricultural products, and labor matters are now in the direct administration of the central state government. In these branches of administrative activity the local corporate organizations of the state have little, if anything, to do. Further, various matters which

formerly were attended to by the localities, are now taken out of their jurisdiction and are attended to by the central state administration. Such is the case in several of the states in the matter of state taxation. Formerly the rule was universal that the state taxes were assessed, levied, and collected by local bodies. Now the state government has sometimes its own system of taxation, separate and apart from the system of local taxation. This is the tendency of the recent tax legislation in New York. Here the state has several separate sources of revenue apart from the general property tax which, even when made use of for the payment of state expenses, is still, as formerly, collected by the localities. Thus the state itself levies and collects the taxes on corporations, inheritances, and on the sale of liquor. In New York, also, quite recently, the charge of pauper lunatics and the administration of the Excise Law have been taken from the localities in the same way and assumed by the central state government. The same is very generally true of the prison administration which, formerly a matter of local, is now largely a matter of central state administration.

The attempt has, however, seldom been made to unite local and central administration by subjecting the powers exercised by local bodies to the control of some central administrative authority. Such an attempt has still been made in a few cases. Thus experience showed that the common

schools could not, with due regard to their best interests, be left in the uncontrolled management of local bodies; and in almost all states there has been established a central administrative authority which is to exercise an extensive control over the actions of the local school authorities. In some states, as in New York, the powers of the central authority are very large.[1] There is no question that the adoption of the central administrative control has been of the greatest benefit in the field of education.[2] Again, it has been found that where the state has entrusted the assessment of its taxes to local officers, their uncontrolled exercise of assessment powers leads to gross inequalities in the burdens of state taxation. For that reason State Boards of Equalization and Assessors have been established, with powers, sometimes on appeal by parties or localities interested, sometimes of their own motion, to equalize the assessment valuations for the purposes of state taxation, by modifying the determinations reached by local bodies. We can also see the germs of a central administrative control in several states in the administration of the public health and public charity.

It will be seen thus that the establishment of a

[1] See the Law of New York of 1864, Chap. 555.

[2] See articles on "Recent Centralizing Tendencies in State Educational Administration," by W. C. Webster, in *Educational Review*, January and February, 1897.

central administrative control over the powers which, while exercised by local bodies, have still a serious influence upon the general interests of the state, is not by any means unknown in our system of state government. But up to the present time practically no attempt has been made to extend this control over municipal corporations as such.[1] An interesting proposition to this effect is to be found in the Reports of the Commissions appointed by the governor of New York in 1895 to draw up charters for cities of the second and third class. Here it was proposed that a municipal government board be established which should be given quite large powers of supervision, particularly over the financial administration of cities of the second and third class.[2] The proposition, however, did not receive any very general approval, and has not as yet been incorporated into the statutes. Generally, however, reliance has been placed almost entirely on the control which the legislature can exercise over such bodies through legislation more or less special in character. As this method has proved unsatisfactory, and as the attempt to abandon it without substituting some other means of control has proved a failure, may we not con-

[1] The city of St. Paul has been very lately subjected to the financial control of a State Examiner of Accounts. Commons, "State Supervision of Cities," *Annals of the American Academy of Social and Political Science*, Vol. V, p. 865.

[2] Holls, *State Boards of Municipal Control*, Baltimore Conference for Good City Government, p. 226.

clude both that some sort of central control over cities is necessary, and that the time is ripe for resort to a method of administrative control which has proved satisfactory, not only in this country, in those few instances in which it has been adopted, but also in Europe? If we answer this question in the affirmative, will it not be wise to study carefully the relation existing between the European city and the central administration? For, while the Anglo-American race has taught the world a valuable lesson in showing them how government should be organized in order to secure civil liberty and provide for the expression of the will of the people, it is certainly true that continental Europe, with its Roman legal traditions, has done much towards the solution of purely administrative problems.

Before entering, however, upon the discussion of European methods of central administrative control over localities, and particularly over cities, it will be well to forestall certain objections that may be advanced against this so-called centralization of the administration. At the outset it must be noticed that the plan of a central administrative control which has been advocated does not in reality propose any further centralization than we now possess. There is now, and always has been, a central control over cities. It has been legislative; the plan proposed merely changes its character. It makes it administrative, but it makes it

no more central than it has always been. Take, for example, the case of a city which desires to incur a debt. Under our present arrangements such city must ordinarily apply to the legislature for a special act giving it the necessary authority. Under the plan proposed such application would have to be made to the governor or state comptroller, or to a municipal or local government board, whose consent, within the limits fixed by general legislation, would be the necessary authority. Further, it is to be remembered that central administrative control has, wherever it has worked most successfully, gone hand in hand with large local powers; and that it has nowhere been so far extended as to take from the localities subject to it, the power to decide for themselves their own affairs, — provided, of course, their decision did not involve the expenditure of so much money as to necessitate the imposition of high taxes, or to seriously mortgage the future. Therefore, central administrative control does not involve as great centralization as central legislative control, to which all American localities are practically now subject. The European method of regulating the relation of the localities with the central government involves, notwithstanding its central administrative control, a larger measure of home rule than is now accorded by the American method of regulating this relation.

But it will be said that this centralization of the

administration will result in the building up of a great state machine which can be made use of to control politics. Such a claim, however, loses sight of the fact that the extremely centralized administration of the United States Federal Government has not had this result; that, indeed, the attempts which have undoubtedly been made so to make use of the Federal administration have recoiled against their authors, who have lost rather than gained by their attempt. The responsibility in the case of the Federal administration is so concentrated that the officers in the control of it cannot shirk the odium which any attempts of that sort will bring upon them. In the states where similar attempts have been made and have been somewhat more successful, — that is, from the point of view of temporary but not permanent success, — the responsibility has not been so concentrated, owing to the more general adoption of the elective principle in the filling of public office. Such a method of filling state offices need not, however, be regarded as permanent. Again, the danger of building up a political machine is due altogether to the existence of the spoils system; and there are few, it is thought, at the present time, who believe, in the face of the great growth of the Civil Service Reform movement in the last ten years, that the spoils system, with all of its undeniable evils, will long remain with us. In any case, no plan of govern-

mental reform can be regarded as of great value so long as the spoils system exists. It may also be said, indeed is said, that at the present time, under our local self-government system, the evils of the spoils system, which we are told we must take into account in any reforms that we consider, are localized and therefore tend to neutralize each other; but that if the administration were further centralized, the machine that was formed would be organized for the benefit of one party, and on account of its greater cohesiveness and greater size would be more difficult to overthrow. There is apparently much truth in this claim, but it is to be remembered that, so far as our experience goes, such has not been the case. Machines have been formed in the state administration where it has been centralized, but they have been short-lived and their authors have derived little permanent advantage from their control. Finally, it must again be said, that we must not assume that the spoils system on which machine politics rests will continue. If a salutary reform is to be delayed merely because such a system now exists, our efforts must be redoubled to cause its destruction and to place our administration on the basis of merit, where it once stood, where it will stand again in the near future, and where every administrative system which is capable of accomplishing much for the community must ever stand.

CHAPTER V

THE CENTRAL ADMINISTRATIVE CONTROL OVER CITIES IN EUROPE

While in England and the United States all instances of a central administrative control are evidences of the spread of ideas of administrative centralization, on the continent, on the contrary, paradoxical as it may seem, they are to be regarded as evidence of the development of the idea of local autonomy. In England, where legislative centralization was reached at quite an early time in her history, the administration, beginning with the sixteenth century, was decentralized in the extreme. The various administrative officers scattered throughout the localities owed allegiance to the Parliament rather than to any administrative superior; and that they performed their duties as laid down in the minute legislation of Parliament was assured by the control over them given to the royal courts. But the experiences of the last century showed that local administration of matters of general interest, uncontrolled in any other way, resulted in administrative inefficiency and lack of harmony and

uniformity, and the continental principle of central administrative control, introduced into the administration of the Poor Law in 1834, has since been adopted in almost all branches of local administration, until at the present time England's administrative system may be regarded as quite highly centralized.

On the continent the course of things was quite different. The greater influence there of the ideas of Feudalism did not permit the idea of the unity of the state to develop, and no popular central legislative authority was established. There were formed both in France and Germany local legislative bodies whose powers varied considerably in extent at different times. The only unity there was in the state government was to be found in the administration with the crown at its head. The purpose of the absolute monarchy everywhere was to realize the idea of national unity, of which the people were only dimly conscious. The absolute monarchy on the continent did, it is true, try, with varying degrees of success, to extend its centralization to matters of legislation as well as of administration. But the main success of the crown in its attempts at centralization was in the domain of administration. By the time of the French Revolution its success here was almost complete. In France, so far as the cities were concerned, it had succeeded in forcing its general scheme of municipal administration on all cities

in the kingdom, and had, as a result of the general ordinances in which this scheme was to be found, secured a very large control over the administration of municipal affairs, appointing most of the important officers.[1] The influence of the French Revolution was in the same direction. It secured unity for France, and the great law of 1800[2] made the city but a part of the central administration, giving the central administration the appointment of all city officers, and subjecting their actions to a most strict central administrative control. After the unity of the state was reached, however, and the supremacy of the central legislative power had been acknowledged, the administration began to be decentralized. This decentralization did not by any means, however, result in the denial of the right of the central administration to control the administration of the cities or other localities where that administration affected the interests of the state as a whole. But it merely provided that where privileges of local government could, with due regard to the interests of the state, be granted, it was better that this should be done.

The same is true of Prussia. The centralization of local and particularly of municipal administration was accomplished by Frederick William the First and Frederick the Great, and the result was

[1] Dareste de la Chavanne, *Histoire de L'Administration*, Vol. I, Chap. 6, Secs. 2 and 3.

[2] The Law of 28th of Pluviôse, an VIII.

the same as in France; namely, the practical absorption of all municipal administration in central state administration.[1] In Prussia, further, as in France, and largely due to the same causes, the central representative legislature played a very unimportant rôle. Indeed it does not appear in Prussian history until about 1848. The administration with the crown at its head attended to legislative as well as to administrative matters. Since 1808, the date of the passage of the great Municipal Corporations Act of Baron Stein, the administration has, as in France, been much decentralized. Particularly is this the case within the last twenty-five years. But, as in France, notwithstanding the grant of large privileges of local government to the localities and particularly to the cities, the central administration has reserved to itself very large powers of control over the actions of the cities in so far as these affect the interests of the state as a whole.

The unimportance, indeed the absence for so long a time of any central legislative authority, had, of course, an important influence on the position which the administration occupied in the post-revolutionary system of governmental polity. Whereas in England, owing to the early recognition of the supremacy of Parliament, — the central legislative body, — administrative officers owed

[1] Bornhak, *Geschichte des Preussischen Verwaltungsrecht*, Vol. II, pp. 24, 156, 289.

their immediate allegiance to that body, and official duties were minutely prescribed in its mandates, on the continent, on account of the absence of any central legislature, administrative officers owed immediate allegiance to some administrative superior, whose instructions delimited their competence and prescribed their duties. When the central state legislature was finally established on the continent, it naturally occupied a position very different from that of the English Parliament. The fact that the detailed duties of subordinate administrative officers had from time immemorial been prescribed by ministerial circulars of instruction made it perfectly natural for the legislature, so far as it interfered with the administration at all, to confine its interference merely to the laying down of general principles which were to be elaborated in detail by executive ordinance and administrative instruction, and to permit the administration to continue to exercise in the future, as it had exercised in the past, a control over the administration of the governmental affairs of the localities. This control hereafter differed from what it had been in the past only in that it was no longer entirely arbitrary, but was to be exercised within the general limits fixed by the statutes of the legislature. But the predominant position of the administrative organization, and its recognized efficiency, made it not only unnecessary but also inexpedient and unnatural for the legislature to assume to exercise the same special control over

administrative matters which it had been the recognized policy of the English Parliament to exercise. On this account special legislation is almost unknown on the continent. This does not mean that special action similar to special legislation is unknown. That is impossible. It merely means that what is in England and the United States done by special legislation, is on the continent ordinarily done by executive ordinance and administrative action within the general limits fixed by the statutes.

To these reasons is due the fact that on the continent the central administrative control exercised over municipal corporations, which is, as has been shown, the remnant now left of the idea that all administration was central state administration, is merely a part of the general administrative centralization, and is exercised by the ordinary central administrative authorities, either the ministerial departments at the capital of the state or the general representatives which the central administration has always had and now has in the localities, and which are an essential part of a centralized administrative system. In England, however, the central control, which has been developed since 1834, could not be organized in this way. The original local self-government system of England could not adapt itself to the changed conditions necessitated by the existence of a central administrative control, without being completely re-

modelled. The central administration had no representatives in the provinces, but matters of general interest were attended to there by local officers, namely, the Justices of the Peace. Therefore the new legislation of Parliament, beginning with the Poor Law Amendment Act of 1834, superimposed upon the original local self-government system, a new system of administration with what is now the Local Government Board at London at its head, which has been given large powers of control over the new local authorities, established since 1834.[1] A comparison of the present continental and English systems must therefore start from different points of view. On the continent the start must be made from a completely centralized administration. In England we must start from a completely decentralized system.

On the continent, then, at the beginning of this century, the city was merely a part of the general administration, and its authorities were for the most part appointed by the central administrative authorities. The first change was made in Prussia, where the Municipal Corporations Act of 1808 was passed as a result of the influence of Stein. As Leidig says: "The modern legal conception of the control of the state over the cities, finds its origin

[1] It will be noticed this is somewhat the same development which has taken place in the United States. The only difference is that the United States development has not been carried so far as has been the English.

in the Municipal Corporations Act of 1808. In this law it was first recognized that the corporations which formed a part of the state organization had their own personality distinct and apart from that of the state, and that they should pursue their own ends independently, within the sphere of competence delimited by the action of the state. From now on the duty of the state was merely to discharge functions of general interest, not, as formerly, to attend to matters of merely municipal concern."[1] The later development of the city has had two results: first, the strengthening of the control of the central administration over the city in order that the city may be more easily kept within the limits of its competence as fixed by general legislation; and second, the grant to municipal authorities of greater authority in the discharge of functions relative to the general interests of the state. But notwithstanding the great steps which have been taken in recognizing that cities have a sphere of action which is theoretically independent of the sphere of action of the central government, the old idea that cities are parts of the general system of administration is still of influence on their relations with the central government. It is seen in the powers which the central state administration has to veto the choice by the city councils of their most important executive officers, and to dissolve the city

[1] Leidig, *Preussisches Stadtrecht*, p. 498.

councils themselves. Up to 1883, the central administration had the further power of unconditionally vetoing all resolutions of the city council and city executive. Since 1883, however, the council or the executive may appeal to the proper court from such veto, which theoretically may be made only in case the resolution in question is beyond the competence of the authority passing it. A similar power of appeal is given to the council against the exercise of the veto power, which is recognized as belonging to the town executive over council resolutions. As the proper court to entertain the appeal is not controlled altogether by officers learned in the law, but is of a popular and lay character, the powers of veto of the professional central administration or of the town executive, in whose formation this central administration participates through its power of approving the appointments of the council, can neither be arbitrarily exercised, nor be exercised altogether in the interests of the central administration. The popular character of the body which ultimately determines when and where it shall be exercised, effectually prevents this. Finally the central administration may, when the local authorities neglect or refuse to do so, insert in the budget of the city appropriations for obligatory expenses; that is, expenses for branches of administration which the law says shall be supported by the cities, and may, if necessary, make provision for the levying of

taxes to provide the necessary moneys. Appeal from its decision may be taken to the Supreme Administrative Court, a body of purely professional character. The difference in the body to which appeals go in these cases is due to the difference in the nature of the decisions appealed from. Those of a political nature to be decided from the point of view of expediency go to a popular body; those of a legal nature go to a body learned in the law. So far it will be noticed that with the exception of the power of dissolution and of approving municipal appointments, the control which has been considered has been formed mainly with the idea of keeping the city within the bounds of its legal competence. While this is ultimately determined by judicial bodies, the powers of control of the central administration are very valuable, inasmuch as the law thus makes it expressly the business of the central administration to force the cities to obey the law. Reliance is not placed upon private interest as in this country, where practically the only way in which the courts can keep the cities or other authorities within the law is upon application of private persons whose rights have been violated by the illegal action of the authorities complained of.

But the control of the central administration over cities in Prussia is much more extensive. It is directed not merely towards maintaining the law as laid down in the statutes; it is also directed

towards preventing the municipality, either as agent of the state government, or as a local governmental organ, from taking unwise action. As has been indicated, the latest legislation makes the city the agent of the state government in a number of cases. Thus a city of 25,000 inhabitants is exempted from the *circle*, — a division roughly corresponding to the county, but generally smaller, — and forms by itself an urban circle, as it is called. All the duties devolved upon the ordinary circle then are devolved upon the city. In the second place, the city generally attends to the administration of the schools, to the care of the poor, and has functions to discharge relative to the administration of justice. Where it is not of large size, it also has the care of the police, which term is used in its widest sense, embracing not only the preservation of the peace, but also the care of the public health, and the protection of the safety of the people generally, such as the prevention and the extinguishment of fires. In the case of the larger cities, however, the law recognizing that the police is not a local matter gives the central administration power, if it sees fit, to take this matter into its own hands, by appointing the persons who are to have charge of it. Where this is done, the expense of the police administration is shared between the city and the central government in the proportions provided for by law. In all these cases, however, it is distinctly

recognized that the city is acting as agent of the central government, and as such it is subjected to the regular central administrative control exercised over these branches of governmental activity in the country at large. The fact that they are attended to by the city does not change their character. While the cities are given certain discretionary powers relative to these matters, mainly of a supplementary character, the central administration does not lose its power to insist upon the taking of a certain minimum of action, or upon wise action by the municipality. This fact comes out most clearly in the school administration, which is one of the most important matters attended to by the city. In the first place, the general system of instruction is prescribed by central legislation and controlled by the central administration, although the city school board, which consists partly of members appointed by the central administration, partly of members elected by the town council, attends to the details of school administration: such as managing the school property, the carrying out of the provisions of the school budget, which is ultimately fixed by the city council, the supervision of the execution of the school law, and the compelling of attendance at school. In the second place, the town council generally appoints, subject to the approval of the central administration, all teachers; and, most important of all its school duties, attends to

the school finances. Here, however, the council is subject to the control of the central administration, which may force it to provide necessary school buildings and apparatus, and money for compensation of teachers. In case, however, of difference of opinion between the city and the central administration as to new school buildings or repairs of old buildings, the matter is decided by the proper administrative court, and in making provision for new teachers the supervisory authority has to bear in mind the financial condition of the city, as well as the needs of the school. While every city is obliged by law, which it may be forced by the central administration to obey, to support the necessary primary schools, it may undertake the maintenance of higher schools. Where this is done, the city school board has charge merely of the economic conditions of the schools, the pedagogical part of their administration being under the control of the principals and of the central school authorities. Finally, it is to be noticed that the central state government, in case of necessity, gives aid to the cities to enable them to maintain both the higher and the lower schools.[1]

The central control is, further, quite strong over the financial administration of the city. Thus, subject to certain limitations contained for the most part in the German Constitution and adopted

[1] Leidig, *op. cit.*, p. 464 *et seq.*

in the interest of German unity and the Imperial finances, Prussian cities have the power, with the consent of the central administration, to impose any kind of tax they see fit. They may, however, without such consent, impose direct taxes, the same as the state direct taxes, to an amount not exceeding fifty per cent of the amount raised by the state in the city, provided such municipal taxes are equally distributed among the various state taxes, which are on land, buildings, income, and trade.[1] Where fifty per cent is exceeded, or the amount raised is distributed unequally among the state direct taxes, the consent of the central administration is necessary. Finally, the central administrative approval of all new loans is necessary. This is to be given by one of the popular authorities referred to.

It will be seen from this description of the central administrative control over cities in Prussia that while it is directed primarily towards keeping the city within the bounds of its competence as fixed by law, and of keeping the municipalities up to the performance of their duties as state agents, it is made use of also incidentally, and particularly in the administration of the municipal finances with the idea of preventing the municipality from acting unwisely even in purely municipal matters. The late reforms in Prussia have, however, subjected the exercise of this central administrative

[1] Loening, *Deutsches Verwaltungsrecht*, p. 188 *et seq*

control in so many cases to the control of popular bodies and courts where it has not been provided that the control itself shall be exercised by such bodies, that it cannot be arbitrarily exercised. The system is really one of large local powers.

In France the main features of the system are the same, although the control is not nearly so complicated as a result of the greater simplicity of the general French system of administration. We find the central administration has, as in Prussia, the power to dissolve the municipal councils and remove the executive, namely, the mayor and his deputies, although its approval of their election is not necessary. Further, the mayor, who is regarded as the direct agent of the central administration in the city, acts as such agent under the supervision and control of the central administration, which may not only suspend him from office, but itself may perform any of the duties of the mayor which he may refuse to perform, and may disapprove any of the police ordinances which he has the power to issue. We find, also, the central administration has the same powers as in Prussia, to force a municipality to perform the duties imposed upon it by the law by inserting in the budget appropriations for obligatory expenses, in the case of the refusal of the city council to act, and to prevent it from exceeding its powers. The same sort of control is given to the central administration over the financial administration. Finally, the

same principle has been adopted, of allowing the cities to appeal from the decisions of the central administration vetoing resolutions of the municipal council on the ground of excess of powers. The appeal goes to the administrative courts, which, in France, are not, however, at all popular in character, but are almost a part of the professional central administration.[1]

Such is the way in which the central administrative control over cities is organized and exercised on the continent. It is, as has been said, a part of the general administrative system, and is a relic of a time when municipal administration was regarded as a part of general state administration. But it cannot be denied that under it municipal corporations have a very large sphere of local action, and that, whether due to it or to the form of organization or to some other unknown causes, municipal government has been, particularly in Germany, very successful.

In England the central control over cities is quite differently organized. The English municipal organization proper is a part of the old English local government system, which, it will be remembered, was quite decentralized. The original English city had few functions of central government to discharge; really only the preservation of the peace through the provision of a police force and the power to pass police ordinances.

[1] See Article 67 of the Law of April 5, 1884.

It was only as Justices of the Peace, appointed so by special commission, that really municipal officers exercised judicial functions. The only original method of central administrative control over cities is to be found in the power of the Privy Council to disapprove city ordinances. All other central control was exercised through special legislation, of which we have seen there has been a good deal even since the general act of 1835. With the course of time, however, the power of the central administration over cities has been strengthened. This has come about in two ways. In the first place, as the general administrative system of the country has been more centralized, the city, upon which new functions of a public character have been imposed, has been subjected to the central administrative control in the same way as other local authorities. In the second place, the general spread of centralization has not failed to have its influence on the purely municipal affairs of the city.

The first step taken in centralizing English administration was made in the Poor Law Amendment Act of 1834, which established a central Poor Law Board to control the actions of the local poor law boards which were then established. The city was, it is true, never given the charge of the poor, and a municipal district bears no relation to the poor law district, the union. But the next step taken in the Public Health Act, passed about

the middle of the century, and later consolidated with its amendments into the Consolidated Act of 1875, made the city an urban sanitary district, and the city council an urban sanitary authority. As such urban sanitary authority it is subject, as are all sanitary authorities, to a very strict central control, which is exercised by the Local Government Board at London, established in 1871, and the successor of the old Poor Law and Health boards. When public schools in the American sense of the word were established in 1870, the city was made a school district; but, as in the case of the poor law administration, the city council did not become the local school authority, which is a school board, elected as are all other school boards. But the city council, although it has no control over the school board, which itself is under the control of a central education department, must raise the necessary funds to carry on the schools. These are raised as part of the borough rate. It is thus seen what an influence in subjecting, what in America would be called municipal administration, to central administrative control, the centralization of the general system of English administration has had.

In the second place, matters always attended to by municipal boroughs have felt the influence of these centralizing tendencies. Acts of 1856 and 1888 have provided for a consolidation with the county police of the police force of all boroughs

of less than ten thousand inhabitants. The Act of 1856 further introduced a central control over the matter of police, by providing that the central government should aid all boroughs in maintaining the police force, provided that a certain standard of efficiency was maintained, which was to be evidenced by the certificate of the Home Secretary, granted only after inspection. The financial powers, particularly the borrowing power, of cities have been limited in that they have frequently been subjected to the central administrative control now exercised by the Local Government Board at London.[1] But this control has been much weakened through the passage of special acts of Parliament, giving the permission to depart from the rules laid down in the general law, — a fact which shows how much less useful is the legislative than the administrative control.[2] While all other localities in England, as well as cities in France, are subjected to the central audit of accounts, the English borough is not; although after the local audit has been had, the accounts must be filed within a month with the Local Government Board at London. Somewhat the same plan is adopted in Prussia.

The central control, which had been distributed among various central authorities for each branch of administration into which the central control

[1] See Article 72 of the Local Government Act of 1888.

[2] See Arminjon, *L'Administration Locale de L'Angleterre*, p. 215.

had been introduced, was, after the report of the Royal Sanitary Commission in 1869, centralized, with the exception of that over school matters,[1] in the Local Government Board at London. This authority has under it a corps of officers, inspectors, auditors, etc., who go about the country supervising the administration of the localities. A perusal of this report will show how necessary the central administrative control was regarded. The commissioners say:[2] "However local the administration of affairs, a central authority will, nevertheless, be always necessary in order to keep the local executive everywhere in action, to aid it when higher skill or information is needed, and to carry out numerous functions of central superintendence. The causes of the present inefficiency of the central sanitary authority are obvious: First, its want of concentration, the reference of general questions of local government being made to the Local Government Act Department of the home office, that of measures 'for diseases prevention' to the Privy Council, and that of other matters to the Board of Trade. Second, the want of central officers, there being, for instance, no staff whatever for constant, and a very small one for occasional inspection. Third, the want of constant and official communication between central and local

[1] In school matters the central control is exercised mostly by the Education Department.

[2] Quoted from Chalmers, *Local Government*, p. 149.

officers throughout the kingdom. A new statute, therefore, should constitute and give adequate strength to one central authority. There should be one recognized and sufficiently powerful minister, not to centralize administration, but on the contrary, to set local life in motion,—a real motive power and an authority to be referred to for guidance and assistance by all the sanitary authorities for local government throughout the country. Great is the *vis inertiæ* to be overcome, the repugnance to self-taxation; the practical distrust of science; and the number of persons interested in offending against sanitary laws, even amongst those who must constitute chiefly the local authorities to enforce them."

While so far as the continent is concerned we have no opportunity to compare the results of central administrative control with local self-government pure and simple, inasmuch as the latter system never existed there, we have such an opportunity in England. The effects of the establishment of the central administrative control in England will be discussed in the next chapter.

CHAPTER VI

THE EFFECTS OF THE CENTRAL ADMINISTRATIVE CONTROL IN ENGLAND[1]

THE central administrative control which was introduced into English local government by the Poor Law Amendment Act of 1834, but has been elaborated by subsequent legislation, has not had the effect of centralizing local government in the sense of providing for the central appointment of local officers. It has consisted merely in giving to the central authorities established for its exercise, powers of supervision over local officials. Such powers are to be exercised in the first place to prevent unwise action on the part of the local authorities, in the second place to overcome negligence on their part, and in the third place to secure obedience to the law fixing their competence. The central powers of supervision are not, however, altogether concentrated in one authority, but are, on the contrary, entrusted to several authorities, the most important of which is the Local Government Board. Further, both

[1] By Milo Roy Maltbie, sometime University Fellow in Administrative Law in Columbia University.

because of the different needs of different branches of administration, and because the system is the result of a long and not altogether symmetrical development, the control over one branch of administration is somewhat different from what it is over another. In what will be hereafter said, therefore, attention will be directed to each specific branch of administration which has been subjected to the central control, and the attempt will be made to ascertain what has been the effect of the control upon it. First in order is the

I. *Poor Law Administration*

The immediate change for the better attending the Poor Law Amendment Act of 1834, which introduced into English local government the principle of central administrative control, has often been noted. The woeful conditions which existed during the first part of this century are generally known, but to estimate correctly the effect of central control it is necessary to contrast the conditions previous to its introduction with the present.[1]

"The poor-rate," says Harriet Martineau, in describing the conditions before 1834, "had become public spoil. The ignorant believed it an inexhaustible fund which belonged to them. To obtain

[1] For an extended description the reader must be referred to the invaluable report of the Poor Law Commission of 1832–34, Sessional Papers, 1834, Vol. 27.

their share, the brutal bullied the administrators; the profligate exhibited their bastards, which must be fed; the idle folded their arms, and waited till they got it; ignorant boys and girls married upon it; poachers, thieves, and prostitutes extorted it by intimidation; county justices lavished it for popularity, and guardians for convenience. This was the way the fund went. As for whence it arose, —it came more and more every year out of the capital of the shopkeeper and the farmer, and the diminishing resources of the country gentleman. The shopkeeper's stock and returns dwindled, as the farmer's land deteriorated, and the gentleman's expenditure contracted. The farmer's sons, waiting, at the age of five-and-thirty, for ability to marry in comfort, saw in every ditch and field on the estate, lads under twenty, whose children were maintained by the rates which were ruining their employer. Instead of the proper number of laborers to till his lands, — laborers paid by himself, — the farmer was compelled to take double the number, whose wages were paid partly out of the rates; and these men, being employed by compulsion on him, were beyond his control, — worked or not as they chose — let down the quality of his land, and disabled him from employing the better men who would have toiled hard for independence. These better men sank down among the worse; the rate-paying cottager, after a vain struggle, went to the pay-table to seek relief; the mod-

est girl might starve, while her bolder neighbor received 1*s.* 6*d.* per week for every illegitimate child. Industry, probity, purity, prudence, — all heart and spirit, the whole soul of goodness, — were melting down into depravity and social ruin, like snow under the foul internal fires which precede the earthquake." [1]

"Before two years were out [*i.e.* after 1834] wages were rising and rates were falling in the whole series of country parishes; farmers were employing more laborers; bullying paupers were transformed into steady workingmen; the decrease of illegitimate births, chargeable to the parish, throughout England, was nearly ten thousand, or nearly thirteen per cent; clergymen testified that they were relieved from much of the pain and shame of having to celebrate marriages where the bride was on the point of becoming a mother, or where the parties were mere children, with no other prospect than the parish pay-table; and, finally, the rates, which had risen nearly a million in their annual amount during the five years before the poor law commission was issued, sank down in the course of five years after it, from being upwards of seven millions to very little above four." [2]

The following statistics are interesting as giving

[1] Harriet Martineau, *History of the Peace*, Vol. III, pp. 324, 325, Boston, 1866, Bk. IV, Chap. VII.

[2] Harriet Martineau, *op. cit.*, p. 333.

a quantitative measure of the great reforms the last sixty years have seen.

Year ended at Lady-day	Price of Wheat per Quarter [1]	Population deduced from Census Returns [1]	Expended for the Relief and Maintenance of the Poor [1]	Rate per Cap. of the Population [1]	Amount raised. Rate per £ of Ratable Value [2]	Paupers per 1000 of Population [3]
	s. d.		£	*s. d.*	*s. d.*	
1803	64 8	9,210,000	4,077,891	8 10¼		
1818	84 1	11,876,200	7,870,801	13 3		
1824	62 0	12,517,900	5,736,900	9 2		
1832	63 4	14,105,600	7,036,969	10 0		
1834	51 11	14,372,000	6,317,255	8 9½		
1835	44 2	14,564,000	5,526,418	7 7		
1837	52,6	14,955,000	4,044,741	5 5		
1843	54 4	16,194,000	5,208,027	6 5¼	—	75 (?) [4]
1848	64 6	17,150,018	6,180,764	7 2¼	—	62.7 [5]
1852	39 4	17,982,849	4,897,685	5 5¼	—	50.9
1856	75 4	18,829,000	6,004,244	6 4½	—	48.7
1861	55 10	19,902,713	5,778,943	5 9¾	—	44.4
1866	43 6	21,145,151	6,439,517	6 1	1 5.4	43.3
1871	49 8½	22,501,316	7,886,724	7 0	1 6.4	46.1
1876	45 5	24,045,385	7,335,858	6 1¼	1 3.5	31.2
1881	43 7	25,714,288	8,102,136	6 3½	1 2.3	30.8
1886	32 0	27,220,105	8,296,230	6 1¼	1 1.8	28.7
1891	32 8	28,762,287	8,643,318	6 0	11.8	26.4
1892	37 2	29,081,047	8,847,678	6 1	11.2	25.6
1893	28 4	29,403,346	9,217,514	6 3¼	11.6	25.8
1894	—	—	—	—	—	26.5

[1] Rep. of P. L. B., S. P., Vol. 23, 1850, pp. 146–7, App. Rep. of L. G. B., S. P., Vol. 31, 1876, p. 282, App. *Ibid.* Vol. 38, 1894, p. 390, App.

[2] *Ibid.* p. 390, App.

[3] *Ibid.* p. 324, App.

[4] Estimate for 1841, Fowle, p. 156.

[5] Figure for 1849.

But these facts do not begin to express the full extent of the reform. The decrease in the rate of expenditure and the proportional number of paupers tell us nothing of their treatment or the conditions of the vast laboring and merchant classes which are not dependent upon aid from the state. Even those dependent upon the poor rates are much better cared for than formerly; indeed, as is claimed by some, to the extent that pauperism is made too inviting instead of being extremely repulsive.

II. *Public Health*

Central administrative control was first introduced in the administration of public health in 1848, but here it was not made complete until 1871. It is proper then to consider three periods in the development: first, conditions previous to 1848; second, those in 1870; and third, conditions obtaining at present.

Two important investigations were made, one in 1843,[1] one in 1844 and 1845,[2] of the conditions existing under the régime of local government pure and simple of the public health. Their results have been summarized as follows: —

[1] Report on the Sanitary Condition of the Laboring Population of Great Britain, S. P., 1843, Vol. 12.

[2] Reports of the Commissioners for Inquiring into the State of Large Towns and Populous Districts, S. P., 1844, Vol. 17; S. P., 1845, Vol. 18.

"Out of fifty towns visited on behalf of the Commissioners, the drainage was reported as bad in forty-three, the cleansing in forty-two, the water-supply in thirty-two. In Liverpool 40,000, and in Manchester 15,000, of the working class lived in cellars, 'dark, damp, dirty, and ill-ventilated'; Nottingham contained 11,000 houses, of which 8000 were built back to back and side to side, so that no ventilation was possible; . . . even in Birmingham, then, as now, a model town, the water supplied to some of the poorer districts is described as being 'as green as a leek.' The results of this state of things were clearly seen. Whilst the death-rate in country districts was 18.2 per thousand, in towns it was 26.2, in Birmingham and Leeds it was 27.2, in Bristol 30.9, in Manchester 33.7, in Liverpool 34.8. . . . The average age at death in Rutland and Wiltshire was $36\frac{1}{2}$ years, whilst in Leeds it was 21, in Manchester 20, in Liverpool 17."[1]

If we institute a comparison between present conditions and those of this early period, we shall find a marked contrast, and all the evidence points towards more rapid progress since 1871 than before.

Considering the death-rate, which, although it is not an infallible index of sanitary conditions, may be taken as a fairly accurate standard of comparison when the same country is considered and decimal periods are used, it is found that the aver-

[1] *Edinburgh Review*, Vol. 173, p. 69.

age death-rate for the eleven years, 1838–48, was 22.23 per mille; from 1849 to 1872, 22.34; and from 1873 to 1893, 19.99; being 19.2 for the single year, 1893. Or to state it more vividly: if the death-rate for 1893 had been the same as that from 1838 to 1848, there would have been upwards of 90,000 more deaths during that year than there really were. This saving of 90,000 persons annually has great economic importance; for the direct effect of improved sanitation has been to increase the duration of life, and this increment has come not to the very old or to the very young, but to the middle-aged, at the time when personal activity is at or near its height.[1]

If one takes into account upon the one hand the fact that medical science has become more able to cope with disease, that the laws of hygiene have become more widely known; and upon the other, the facts that the death-rate is only a very imperfect index of the amount of sickness which does not terminate fatally, and that it is universally conceded that sickness has greatly diminished, it becomes evident that the improvement in sanitary conditions is much greater than the death-rate would indicate.[2] And it should not be forgotten

[1] For discussion and proof consult Vol. 37 of the Journal of Statistical Society, London; "The Value of Death Rates, as a Test of Sanitary Condition," by N. A. Humphreys.

[2] Sex and age distribution might influence these figures some, but the corrections that need to be made when the same country is dealt with and for long periods are slight indeed.

in this connection that although the crowding of people into large cities is not a *cause* of greater mortality and sickness, yet there is a strong tendency for the two to be found in unison, and that in spite of the rapid growth of cities since 1850, the death-rate is at present much lower than previous to that date.

But to ascertain more directly the change produced, one may consult the death-rate due to zymotic diseases, which are more directly affected by the state of sanitation than any other class; or to specialize still further, the deaths due to fever might be studied, with the following result.

DEATH-RATE PER 1000 OF POPULATION[1]

	1861–70	1871–80	1881–87
Zymotic diseases . .	4.25	3.38	2.45
Fever	0.88	0.49	0.25

DEATHS FROM TYPHUS, ENTERIC, CONTINUED FEVER[2]

	1850	1855	1860	1865	1870	1875	1880	1885	1887
Per 1,000,000 living	865	875	654	1089	796	543	342	209	207
Per 1,000 deaths	43	39	31	47	35	24	17	11	10

A comparison of the death-rates of urban and rural districts is also interesting.

[1] Newsholme, *Vital Statistics*, p. 173. [2] *Ibid.* p. 185.

DEATH-RATE PER 1000 POPULATION[1]

	1851–60	1861–70	1871–80	1881–93	1893
Rural districts . .	19.9	19.7	19.0	17.5	17.4
Urban districts . .	24.6	24.8	23.1	20.3	20.2

PROPORTION OF POPULATION[1]

	1871	1881	1891
Rural districts . . .	43%	41%	36%
Urban districts . . .	57%	59%	64%

It is thus seen that the decrease has been greater in urban than in rural districts, in spite of the fact that the former have been increasing in population much more rapidly than the latter, and therefore have been confronted with more difficult problems. The decrease in the death-rate in urban districts as compared with rural districts may be due to two causes. One is that the urban districts have more generally undertaken works of sanitary improvements, the other, which may be partially responsible for the former, is that the central administrative control is greater over urban than it is over rural districts.

In the statistics that have been given, it has probably been noticed that a decline began about

[1] Compiled from the Reports of the Registrar-General.

1870 to 1875, or, if there had been any decline previously, that at or about this time it became more rapid. This is no coincidence. There is another explanation. A plan for a strong central supervision of local administration was introduced in 1848, and although quite energetically operated for a few years, was almost abandoned after 1854. Again in 1866, the powers of the government began to be strengthened, and in 1872 and 1875 a quite complete system was established. Previous to this time, the chief work of the central department was that of arousing interest, making known the exact status of affairs, and by other direct means inciting action and progress. Its success is seen in the small increase in the death-rate from 1849 to 1872, which would probably have gone much higher had nothing been done to counteract the tendencies of a rapidly increasing urban population. When the acts of 1872 and 1875 completed the scheme, progress was more rapid, and the evidence shows, as is usually conceded, that the relation was one of cause and effect, not of coincidence.[1]

III. *Constabulary*

Legislative acts of a general character dealing with the establishment, maintenance, and control of a local police force are extremely modern. In

[1] Cf. Report of Registrar-General, 1881, p. xv; Newsholme, *op. cit.*, p. 127.

the first ones of any importance, which were passed during the fourth decade of the present century, slight traces of a central control are to be found; but it was not until 1856 that a plan for genuine control can be said to have been established, at least to have been actually enforced. Here again one finds an enormous difference between the conditions that existed prior to this date and those of modern times. Here again, also, one finds a marked improvement immediately after the central government began to exercise its powers of direction and supervision.

The Parliamentary Commission of 1839, appointed to report upon the establishment of an efficient constabulary force, stated as a summary of the evidence gathered, relative to the success of local government, pure and simple, in preserving the peace: —

"That a large proportion of the highways are left without any protection whatsoever, from any constabulary or other civil force.

"That on the highways of a large part of the country, commercial travellers and strangers who travel singly, otherwise than by public conveyances, and carry money about them, abstain from travelling after dark, from fear of robbery and violence; and that farmers return from market in company, from like fear, after dark. . . .

"Having investigated the general causes of depredation, of vagrancy, and mendicancy, as de-

veloped by examinations of the previous lives of criminals or vagrants in the gaols, we find that in scarcely any cases is it ascribable to the pressure of unavoidable want or destitution; and that in the great mass of cases it arises from the temptation of obtaining property with a less degree of labor than by regular industry, which they are enabled to do by the impunity occasioned by the absence of the proper constitutional protection of the subject."[1]

In the seventeen years between 1839 and 1856 not much improvement was made except in the larger cities, and in many of these the force was inefficient, both as regards numbers and discipline. The less populous centres and country districts had done very little, if anything. Many of the members of the constabulary followed various trades and occupations, viewing their official position as a matter of minor importance. Small riots at elections could not be put down, and in many instances the aid promised the localities by the early statutes relative to police was refused because it was thought the needy locality had not done what it should to improve the condition of its police.[2] Twenty counties, including two Ridings in Yorkshire, had not adopted the act of 3 and 4 Victoria,[3] — the last important act relative to the

[1] Sessional Papers, 1839, Vol. 19, pp. 180, 181.

[2] Report of Select Commission, S. P., 1852–53, Vol. 36.

[3] Sir George Gray in Hansard's Debates, III Series, Vol. 140, p. 231.

police passed by Parliament. The county of Rutland had only one constable, who was supposed to oversee a population of 22,983.[1] Cumberland was some better, having *only* 5333 under the guardianship of one officer. The larger boroughs, as Liverpool, Birmingham, and Manchester, had fair systems, but the others were described as "nurseries of crime." Stockport, with a population of 54,000, possessed fifteen constables; Ashton-under-line, 30,000, seven constables.[2] But these figures are too favorable, for they represent the facts in the fall of 1856, after improvement had been made in order to obtain the government subsidy for the coming year. It must be remembered also that the individual and collective efficiency of these constables was much lower than that of the same number to-day.

Proceeding now to compare this period with the present, it is interesting to note the decline in the number of localities — counties or boroughs — which did not secure aid from the central government, because they had not during the previous year maintained a police force in such a degree of efficiency as to justify the Secretary of State in granting a certificate of efficiency. The following expresses the truth as correctly as would the figures for each year.

[1] Report of Inspectors of the Constabulary, S. P., 1857–58, Vol. 47, p. 24.

[2] Hansard, *op. cit.*, Vol. 140, pp. 231–2.

	1857	'60	'65	'70	'75	'80	'85	'90
Boroughs, cities, counties, etc., receiving no grants[1] . . .	120	78	59	56	38	32	25	00

This table is of little value until this fact is added: that the standard of efficiency which a force was obliged to reach to receive the subsidy has been raised every year. No locality was allowed to content itself with past achievements, but was obliged to make further progress or lose the subsidy.[2]

Comparing the number of inhabitants with the numerical strength of the constabulary, it is found that whereas in 1856 there were, upon an average, 1784 persons to one constable, the number had decreased by 1893 to 971. In other words, while the population increased 46 per cent the constabulary increased 168 per cent.[3]

Another and greater transformation, for which there is no quantitative measurement, has been made. It is the great increase in efficiency, both when taken individually and collectively. Figures might be given as to the number of crimes com-

[1] Compiled from the Annual Reports of the Inspectors of the Constabulary, and from the Judicial Statistics.

[2] Colchester was reported inefficient in 1893. S. P., 1894, Vol. 42, p. 5.

[3] These figures are based upon the census returns of 1851 and 1891, and the reports of the inspectors for 1856 and 1893.

mitted, of arrests, and convictions, but as there are so many other influences besides the efficiency of the police which cannot be disengaged, any conclusions drawn therefrom would be almost valueless. But the statement is never questioned that, whatever may be the faults of the present police system in England, there is no comparison between the present system and that which existed previous to 1856. The men are personally more capable. They realize the duty resting upon them to enforce the law and to bring offenders to justice. Discipline is also immeasurably better. Methods to secure greater efficiency from the same amount of exertion have been invented and applied. The telephone and telegraph have been utilized with highly beneficial results. As a result, laws are better enforced, offenders are more quickly apprehended, and the safety and security of life and property is assured. And this, too, in spite of the extension of the functions and duties of the government and the great increase in urban population.

IV. *Elementary Education*

When the birth of the Reformation and the overthrow of the monasteries made necessary a change in the support and management of schools, private individuals, through the instrumentality of the church or other voluntary organizations, took up the task of educating the youth. The state re-

mained inactive. Not until 1816 was it asserted by even a semi-official authority that education was a matter of concern to the state,[1] and not until seventeen years later did it undertake to aid the feeble, spasmodic, and erratic attempts of private individuals by appropriating $100,000 for the erection of schoolhouses in Great Britain.[2]

The period from 1833 to the present day is naturally divided into two periods, of which the year 1870 may be said to mark the point of transition. In the earlier period the central government undertook to improve educational conditions by appropriations, to be distributed among the schools maintained by the churches or private individuals upon compliance with certain conditions which the central government imposed. In 1870 the power of the Education Department was largely increased by giving it certain powers of compulsion, as those of appointing local officers in case the requirements of the law are not fulfilled and of issuing by-laws making attendance at school compulsory. It was but the carrying of the theory of central control to its logical conclusion; but it may be well to notice, when ascertaining what has been accomplished, how far the two systems have been successful. Considering the development statistically, the following table is of interest. The statistics for the fourth decade

[1] S. P., 1888, Vol. 35, p. 4.

[2] 3 and 4 Wm. IV, c. 96, s. 17.

are so imperfect and inaccurate that they have been omitted, for any conclusions therefrom would be valueless.

Concerning the period from 1833 to 1870 it is evident that there was considerable reform; for although statistical comparisons have no value, the figures given on p. 129 show that quite an educational system had been developed in the thirty-seven intervening years. Yet the conditions of 1870 are to be admired only when compared with those of the previous period. There was still great need and room for further advance. That it came is indicated by the opposite table. When the movement began in the fourth decade, it was slow and faltering; but its pace gradually quickened, becoming more rapid when the legislation of 1870 and the following years rendered the system of central supervision complete. The most significant facts are the great increase in the *per capita* expenditure for each scholar, the salaries of teachers, and the accommodation of schools and average attendance of pupils. One should not fail to observe that the accommodation of day schools has increased at a much more rapid rate than the population, the former rate being over two and one-quarter times the latter. And the average attendance has increased at a still more rapid pace, but is excelled by the increase in the number of teachers. These, indeed, are important signs, for a progressive educational system should exhibit just such tendencies.

		Year ending Aug. 31, 1893	Aug. 31, 1881	Aug. 31, 1873	Year ending Aug. 30, 1870	% of Gain from 1870-93	1861
K	Cost of Maintenance per Child in Average Attendance.	£ s. d.	£ s. d.		£ s. d.		
E. & W.	Inspected Schools — Board	2 8 1¼	2 1 6			89.3	
E. & W.	Inspected Schools — Voluntary	1 17 6¼	1 14 11½		1 5 5	47.6	
	Average Salary of Certificated Master	121 15 2	120 16 1		94 2 1	29.4	
	Average Salary of Certificated Mistress	79 4 0	72 10 4		57 11 1	37.6	
E. & W.	Estimated Population	29,731,100	26,055,406	23,356,414	22,090,163	34.6	
	Per cent of Population Accommodated	19.38%	16.73%	10.62%	8.50%	10.88%	
E. & W.	Accommodation of Day Schools	5,762,617	4,389,633	2,582,549	1,878,584	207.3	
E. & W.	Average Attendance	4,100,030	2,863,535	1,482,480	1,152,389	255.8	
E. & W.	Number of Teachers	101,751	75,760	43,454	28,033	262.9	21,879
E. & W.	Day and Night Schools — Inspected	19,867	18,189		8,281	139.9	
E. & W.	Departments — Day Schools	29,804	26,376	17,384	12,061	147.1	
E. & W.	Departments — Night Schools	1,977	1,222	17,384	2,504	—	
E. & W.	Sum Expended — School Boards	7,765,299	3,821,838	1,174,985			
E.	Administration	5%	6.5%				
E.	Maintenance	56.6	51.9				
E.	Capital Charges for Works of a Permanent Character	20.2	27.5				
E.	Repayment of Loans	6.3	3.8				
E.	Interest on Loans	9.4	10.1				
E.	Miscellaneous	2.5	.2				
E. & W.	School Attendance Com.	772	753	—			
E. & W.	School Attendance Com. — Population	9,382,146	9,269,636	—			
E. & W.	School Boards	2,392	2,089	822			
E. & W.	School Boards — Population	19,620,379	13,422,680	10,494,507			
	Sessional Papers	pp. xvi, xxix, xxxiii, xxxiv, xxxix, xli. Vol. 29, 1894.	ix, xxii, xxvii, xl, xli. Vol. 23, 1882.	ix, xviii. Vol. 18, 1874.			

Should it be asked, What is the present efficiency of the educational system in England? I would answer briefly that it is about the same as ours. In some points the United States excels, while in others England leads, and a more definite answer depends upon the relative importance of these features. All in all, the reader will very nearly grasp the truth of the situation if he decides that Elementary Education in England is about as practical, thorough, and efficient as Primary Education in the United States.[1]

V. *Local Finance — Expenditure*

The plan of making the approval of a central authority, such as the Local Government Board or the Board of Trade, necessary to the purchase of waterworks, the purchase, renting, or sale of lands, the levying of tolls, or the many other acts of this nature, has apparently worked very well. Since its adoption by the Poor Law Amendment Act, 1834, it has been embodied, to a greater or less degree, in the many subsequent acts which have attempted to reform other branches of local government. As far as can be ascertained, there have been no attacks upon the plan, and it seems to have been quite successful. The general principle is that when the acquirement of property or

[1] Further information may be quickly gathered from a recent book by Dr. Isaac Sharpless, *English Education*, New York, 1892.

privileges is for a purpose of great necessity and one in which the local authority is not likely to exceed its proper sphere nor violate private rights, the conditions are simple, easy of fulfilment, and the approval of a central authority is not required; but when the tendency is in the opposite direction, the action of the local authority is beset with many restrictions, and the one most common is that requiring the consent of a central department. To be sure, this kind of central control often acts more through its potentiality than through the actual refusal of the central authority to give its consent, but this does not lessen its utility. Its practical operation has been so satisfactory that it will in all probability be continued.

The effects of the plan of requiring the local authorities to secure the consent of the central government to the raising of loans — the exceptions are very few — have been much more noticeable. To study them, we need not go back of 1870; for the plan is a restrictive measure, and previous to that date, the problem was how to arouse the localities to action, rather than how to prevent them from plunging too rapidly into debt. In the last two and a half decades conditions have changed, and now the problem is how to keep local indebtedness within proper bounds; how to prevent the raising of loans for unnecessary purposes; how to keep the period of repayment down so that future generations will not be obliged to

bear burdens from which they have received no benefits; and how to assure proper methods of repayment, sinking funds, and prompt cancellation of bonds.

One of the most noticeable effects of this kind of central control is that the periods of repayment sanctioned by the Local Government Board have been far within the statutory limits. All loans authorized by the public health acts might extend through a period of sixty years, if the approval of the board could be secured; but it is seldom a term of fifty years is exceeded. Even in 1874, when much greater leniency was the rule than at present, the restraining influence of the board was quite important, as the following table shows.[1]

Periods in Years	Per cent of Total Amount of Loans	Per cent of Total Number of Loans Approved by L. G. B.
57	1.0	0.4
50	14.0	5.0
31	0.5	0.4
30	61.0	61.4
20–29	9.0	13.0
10–19	3.9	10.3
1–9	4.2	6.8
Not given	6.3	2.7
Total, £940,937. Loans, 223.		

[1] Report L. G. B., Sessional Papers, 1874, Vol. 25, pp. 682–686, App.

In 1892 the figures for loans sanctioned to urban and rural sanitary districts were :[1]—

Period of Payment	Per cent of the Total Number	
50	9.3	1122 loans.
31–39	1.3	
30	41.5	
20–29	21.7	
10–19	16.0	
1–9	10.2	

In other words, one-tenth exceeded thirty years, between six and seven-tenths lay between twenty and thirty inclusive, and the remaining two and one-half tenths fell below twenty. Of the 104 loans, extending over a period of fifty years, eighty-nine were specifically mentioned as being for the purchase of land, and the remainder were distributed as follows: sewerage and sewage disposal, two; street improvement, seven; water supply, one; depot, one; repayment of loans, four. Consulting the purposes for which the loans were made, one finds that by far the greater portion, both in number and amount of capital, were for street improvement, water supply, sewerage, and sewage disposal. From these facts and other evidence to be found in the reports, one is soon convinced that the board has exercised a very restrictive influence;

[1] *Ibid.* 1893, Vol. 43, pp. 394–411, 415–419, App.

that the period of utility and repayment have usually agreed, and that therefore the plan of central control has been extremely beneficial, especially as over against a control through legislative enactment, which could not possibly have secured the same results. Whereas statutory limits must of necessity be more or less rigid and cannot decide each case upon its merits, but must be high enough to prevent the constant resort to special acts, with the result that all loans are apt to reach the limit which in theory only a few should attain, an administrative authority can investigate each case, decide it in reference, not to the nature of the purpose, but to the period of utility, and consequently give a just and equitable decision.

If we compare the legislative control as exercised through local acts with the central administrative control, we again see the superiority of the latter. Even during the period from 1875 to 1880, when the Local Government Board rarely allowed the term to exceed fifty years, it was the exception rather than the rule for the time set by local acts to be below sixty years, and instances are given where it reached 85, 90, 100, or even 110 years.[1] Since 1880, the difference between the results of the two methods has become less. The tendency of Parliament has been to grant the requests of localities which seek to lengthen unduly the period

[1] Reports of L. G. B., particularly for 1879, 1880, 1881, and 1883. Also the *Edinburgh Review*, April, 1881, Vol. 153, p. 553.

of repayment, and the present lack of excessively long periods is due to the plan of securing and following the advice of the central departments which have almost invariably restrained the local authorities, and thereby lessened the evils which might have resulted from a control entirely legislative.

What has been said regarding the period of repayment applies, *mutatis mutandis*, to other matters which are involved in the negotiation and repayment of loans; viz. sinking funds, regular payment of interest, expenditure for purposes ascribed, and the many other matters prescribed both by law and sound finance. Through the power to issue orders remedying any misappropriation of loans, which orders may be enforced by a writ of *mandamus*, and through the indirect method of refusing to approve loans whenever they think advisable, the central departments possess a power of no mean importance. Private interest, here as elsewhere, has proven inadequate, and legislative control cannot reach the subject at all. Administrative supervision has, upon the other hand, been extremely beneficial. Hardly a single report of the Local Government Board fails to call attention to its beneficial results. The frequency with which resort has been had to local acts strongly attests the wide influence and the desire to escape this dictatorial power.

The question whether central administrative control has kept the localities from making loans

for improper purposes, and from plunging too heavily into debt, is more difficult to answer. That it has been a factor of no small importance in preventing the acceptance of excessive estimates is usually admitted; but whether local indebtedness has been permitted to accumulate too rapidly is a much-disputed question. The answer depends primarily upon the view taken of the proper functions of government. A thorough consideration would involve a lengthy discussion, for which there is no place in this brief résumé. A few brief comparisons may, however, be given. All the evidence at hand points towards an affirmative answer of both questions as first stated.

Nearly every general act fixes a ratio of indebtedness which may be incurred for the purposes enumerated in the act, and this ratio limits not only the local authority, but also the amount that the central authority may approve as well. Complete statistics are not to be had, but if one compares the ratable value of all England with the local indebtedness, a wide margin is found between the actual ratio and the statutory limit. Remembering that over half is due to local acts where no approval of a central administrative authority has been required, one is easily convinced of the restrictive tendency of the plan. Statutory limitations have been of little value, and as between the two, the central administrative control has exercised by far the greater restraining influence. The custom

has been for localities to appeal to Parliament for power to do what they would not be permitted to do by the departments, or what they thought would not be approved should an application be made, with the result, as noted above, that more indebtedness has been incurred under local acts than under sanction of the Local Government Board. The present plan of requiring these acts to be considered and reported upon by some central department is gaining ground, with the result that even the local acts are conforming more and more to the principles laid down by the departments as to approval of loans, and that they deal more with exceptional instances than with questions plainly within the realm of the central departments. This is itself a result brought about by the Local Government Board, and is evidence that the central control is much more efficient when exercised by an administrative authority than when exercised by the legislature through the passage of special legislation.

VI. *Central Audit*

The present system of having the accounts of the local authorities audited by agents of the central government appointed by the Local Government Board had its origin in the department of poor relief, but gradually extended until now hardly a local authority exists which is not obliged to submit its accounts to the district auditors. The

only prominent exception is the borough council, but it is an exception only when acting as a municipal authority. When performing other functions, as those of a district council, it is subject to the general rule.

The conditions previous to 1834, when the first step was taken towards central control, were chaotic. About the only similarity manifest was that the auditing, such as it was, was conducted by the local authorities themselves or by persons appointed by them. The defects, from a standpoint of theory, in such a plan prepare one for the facts. There were rare instances where a thorough and efficient audit was had, and viewing the country as a unit, the report of an assistant commissioner to the Poor Law Commission of 1832–34 may be considered as a very representative picture. "To talk of auditing and examining parish accounts is in nine cases out of ten a perfect mockery. It is true that in some parishes they are said to be examined half-yearly, and in others quarterly; but the fact is that in the great majority of parishes a meeting of parishioners is convened at the end of the year to examine the overseers' accounts previous to being passed by the magistrates. This is the only examination they undergo. A whole year's account, consisting of hundreds of items, and, in general, obscurely arranged, is professed to be investigated in the course of a few hours to the satisfaction of a most

intelligent and scrutinizing audience, the majority of whom are in all probability friends and partisans of the overseers! After this solemn and public audit by the parish, they are submitted to the magistrates, are sworn to by the overseers, and the signature of magisterial approbation is affixed, as a matter of course, without examination, perhaps without even a cursory glance. . . . The present system (if system it can be called) offers an almost irresistible temptation to dishonesty, by rendering the chances of detection extremely difficult if not impossible." [1]

The present central audit has been reached by slow development. The strict central control now exercised was not achieved at a single bound, but each step being attended with better results, the movement continued. The present conditions are as follows: —

As to the district auditors themselves, it may be said that they are a highly capable, efficient, and independent class of men. Local and personal influences have little effect, and although it is never possible to remove them absolutely, they have been reduced to a minimum. The law is applied with a vigor that often arouses the animosity of local officers, and were it not for the privilege of appeal to the Local Government Board, some transformation would have to take place. Fifteen years ago, it was not infrequent to

[1] From the report of an assistant commissioner appointed by the P. L. Com. of 1832–34, S. P., Vol. 28, p. 666, App. A.

find such charges as these in the disallowances of the auditor: Destruction of five foxes, £3; destruction of moles contracted for at the rate £8 per year for fourteen years; "Theatre, 4*s.*"; two silver keys, £12;[1] travelling expenses, when no travelling had been done; local festivities, as perambulating parish boundaries; "Coppers scrambled for *en route*, £1 2*s.*"; "Coppers given with a bun to each child attending the perambulation, 13*s.* 10*d.*"[2] Similar items are much less frequently found to-day, and chiefly because the auditor has disallowed them, although such expenditures had been the custom for years. That they have not more rapidly and completely disappeared is due not to any fault of the auditor, but to a cause to be spoken of subsequently. The number of appeals from the allowances of the auditors furnishes another evidence of their efficiency. From 1876 to 1893 inclusive, only 282 appeals were taken, an average of sixteen per year. Of this number, the Local Government Board reversed the decisions in but six per cent of the cases.

As to the power of the Local Government Board to decide appeals brought against the decisions of the auditors, there is conclusive evidence to show that the board has been very lenient with the local authorities from the first. The statistics for three periods are as follows: —

[1] Report of L. G. B., S. P. 1882, Vol. 30, pp. 54-56.

[2] *Ibid.* 1883, Vol. 28, p. 49.

	Confirmed and Remitted	Confirmed and not Remitted	Reversed	Otherwise Decided
	%	%	%	
1852–53, 2 yrs.	83.2	4.8	8.6	3.4
1880–83, 4 yrs.	83.8	5.7	9.7	.7
1890–93, 4 yrs.	82.4	5.8	10.4	1.4 [1]

It is thus shown that there has been no practical decrease in the proportion of cases where the legality of the auditor's course was upheld, but where the power of rendering what the board thought to be an equitable decision was exercised. In close union with this statement, the fact is to be noted that whereas in 1880–83 29.9 per cent of the whole number of disallowances and surcharges were appealed, in 1890–93 40.1 per cent were appealed. Combining both facts, it is found that in the former period 25.2 per cent of the disallowances and surcharges were remitted, and in the latter 33.4 per cent. It is true that since 1881 there has been a great decrease in the absolute numbers, but as the largest falling off has come since 1887, when the Local Authorities' Expenses Act was passed, whereby appeal was permitted before audit, and as this privilege has been widely used, this decrease cannot be cited as contradicting the above conclusions.[2]

[1] Reports of L. G. B.

[2] Hardly a report since 1888 fails to declare that the decrease is due to this act.

The frequency with which the board has confirmed and remitted the decisions of the auditors, thus freeing the local authorities from any penalties, is the principal reason that disbursements for illegal purposes have not more rapidly disappeared from accounts. Local authorities know that if the auditor disallows the expenditure, they can appeal to the board, plead that they were unaware of the illegality, and be relieved from paying the penalty. This course also removes the incentive to inform themselves as to what are legal expenses, and no doubt furnishes the explanation for the increase — in per cent — of the number of appeals. A premium is placed upon ignorance of the law and the use of the right of appeal.

It should be said in favor of the attitude of the board, however, that a too rigid exercise of its powers would have brought down upon its head severe condemnation and perhaps resulted in the repeal of the law. The Englishman's inbred opposition to centralization must never be forgotten. Every advance has been bitterly opposed, and only by slow degrees has the present situation been attained. It is very probable that had the board held the local authorities to the very letter of the law, public opinion would have demanded the removal of this central control and far inferior results would have been secured than in reality have been. The fault is one capable of being remedied, and probably will be as time moves on. All in all, the

system recommends itself to students of administrative law as not only founded upon correct theory, but as proven to work satisfactorily by experience.

This brief consideration of the effects of the establishment of the central administrative control in England cannot fail to force the conclusion that the frank recognition in the recent English legislation that the state as a whole has a vital interest in the performance by the local authorities of many of the functions of government entrusted to them, and the subjection of such functions of government to central administrative supervision, have been among the causes which have transformed English social and political conditions during the present century. The marked improvement in English local government, the great increase of its efficiency, have been secured also without an undue centralization, without diminishing local public spirit, which, as seen in the actions of the English municipalities, was at no time in English history greater than it is at present. While in America we have been extending the powers of the legislature over our cities, largely as a result of the previous decentralization of our administrative system, until municipal administration has — from the point of view of legislative interference therein — come to be regarded almost as a part of general state administration, England

has turned aside from her historic administrative decentralization, her local self-government, and after continental examples, has resolutely entered upon the pathway of administrative centralization wherever the needs of administrative uniformity have made such a step seem necessary. The result has been to reduce legislative interference in local government to a minimum, to increase enormously the efficiency of local government, and by clearly differentiating the state agency of cities from their sphere of action as local organizations, to open the way for a great expansion of municipal activity to be seen in the vigorous way with which the English cities have grappled with distinctively municipal problems, such as the housing of the poor and the better care generally of the local interests of their inhabitants.

It is confidently believed that the adoption of a similar policy in the United States cannot fail to be followed by the same results.

CHAPTER VII

UNIVERSAL SUFFRAGE

The position of the city has an effect not only on its relations with the state legislature and the state government, generally, but also on the determination of the questions of who, among the municipal population, shall ultimately regulate municipal affairs, *i.e.* who shall vote at municipal elections, and how they shall organize politically, as well as upon the form of municipal organization. In this and the succeeding chapters, attention will be directed to the subjects of municipal suffrage and municipal politics, and the attempt will be made to ascertain what effect the assignment of its proper position to the American city and its proper organization will have both in diminishing the evils of universal municipal suffrage, and in separating municipal from state politics.

The fact that a city is an agent of government, makes it necessary to regard universal municipal suffrage necessary in a country where universal state suffrage is adopted. Where the city is as important an agent of state government as it is in the United States, the reasons for universal municipal suffrage are still stronger if universal suffrage

is regarded as proper in the state government. For if we introduce limited municipal suffrage, and still permit the city to act as the agent of the state government, we run great danger of conflict between the state electors, who determine the making of the law, and the municipal electors, who determine how it shall be enforced in the city. Centralization in legislation and decentralization in administration, as has been pointed out, cause considerable conflict even under universal municipal and state suffrage. The danger of conflict under limited municipal suffrage would be much greater. Where the city's position as agent of the state government is unimportant, and where, when it is acting as such agent, it is subjected to some more efficient central control than is at present to be found in the American system of government, it might be proper to provide for limited municipal suffrage. But so long as the city is an important agent of general government, so long must universal suffrage for municipal officers be retained, if it is retained for state officers. This statement must not be taken as meaning that universal suffrage is to be considered as irrevocably adopted in the state government. If it shall be determined to be wise to limit the suffrage, it will be undoubtedly an exceedingly difficult task to realize that determination. But that it will be impossible no one can say in the light of the experience which we have had in the last few years. In the South,

in several instances, the people have determined to limit the suffrage by introducing into the organic law educational qualifications. In these cases there were undoubtedly peculiar local reasons which do not exist in other parts of the country. The existence of a large ignorant negro population in those states which have adopted such qualifications, threatened so serious dangers to good government that the white population could quite easily reconcile itself to an abridgment of what in our government has been generally considered a natural right. The Fifteenth Amendment of the Federal Constitution stood in the way of a more direct exclusion of the negroes from the right to vote, and the introduction of an educational qualification seemed to be the only way constitutionally to attain the desired end. While the fact that the white population of the South were willing to submit to a serious limitation of their former political rights, when the dangers with which universal suffrage in their peculiar social conditions threatened them became really serious, is too patent to deny, it may be said that it is useless to expect the same result in other parts of the country. This, however, is merely a prophecy, which recent events in California show to be erroneous. In 1892 the matter was laid before the people of that state, and by a vote of 151,320 in favor of to 41,059 against, a similar educational qualification was adopted.

We cannot, therefore, conclude that the people of this country are irrevocably committed to the idea of universal suffrage, but must believe, rather, that if once convinced that universal suffrage inevitably must result in inefficient and corrupt government, it will be abandoned. Further, attention must be called to the fact that the Federal Constitution, which is the only one of our constitutional documents practically not susceptible of amendment, does not make the change impossible. The only provisions of that instrument which apparently stand in the way are the Fourteenth and Fifteenth Amendments. The Fifteenth Amendment merely provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. This amendment does not, of course, prevent the adoption of an educational or property qualification. In the case of the Fourteenth Amendment the matter is not, however, so clear. This provides that "when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive or judicial officers of the state or the members of the legislature thereof, is denied to any of the male inhabitants of such states, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion or other crimes,

the basis of representation [that is, of the state in Congress] shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state." This amendment is, however, an injunction addressed to the National Legislature rather than a provision of the positive law, and, when taken with the power conferred later on, on Congress, to enforce the provision by appropriate legislation, must be regarded as appealing rather to the discretion of that body than as mandatory upon it. This would be the inference to be derived from those decisions which have been made relative to laws passed without limitations by the legislature under constitutional provisions requiring the legislature to limit the powers of taxation and assessments of localities.[1] But whatever may be the rule of the courts on this point, it is difficult to see how in the absence of Congressional action the subject could get before the courts. As Congress reflects the feelings of the people, such action on its part is not to be expected, provided there is substantial unanimity on the part of the people as to the desirability of educational or other qualifications. Further, the feeling of the people and of

[1] See Hill *v.* Higdon, 5 Ohio St. 248, where it is said "a failure to perform this duty [that is, of so restricting the exercise of local powers of taxation as to prevent abuse] may be of very serious import, but lays no foundation for judicial correction." See also cases cited on this point in Dillon, *Law of Municipal Corporations*, 4th ed., p. 85, Note 6.

Congress, as evidenced by the recent repeal of the Federal Election Laws, is that election and suffrage matters shall be left to be determined by the states. The question of universal suffrage may therefore be considered still an open one, to be settled in accord with the people's ideas of expediency.

It must, however, be recognized that as yet the people are not generally convinced of the impropriety of universal suffrage. It will unquestionably take long years of agitation to bring such a conviction home to them, and it will have to be shown that the present recognized evils of our governmental system are without doubt due to universal suffrage before they will be brought to make any change. At the present time it is believed that this cannot be done. It cannot be done for three reasons: In the first place, the feeling is spreading at the present time, that the evils which are attributed to universal suffrage may result from our present system of representation. It is claimed that our present system of representation, which is representation of locality, is due only partly to natural circumstances, that it is due in great part to historical tradition. Historically, all states are based more or less on the federal idea. All modern states have been formed really as the result of the union of more or less separate and independent localities. So long as the federal idea exists, the locality principle of representation

is based on natural conditions. Further, so long as there is a difference in local needs, based on geographical and other similar variation, the system of representation must be based to an extent, at any rate, on locality. In many cases, however, and particularly in the case of municipalities, which are comparatively homogeneous so far as their local conditions are concerned, the necessity for the adoption of the locality principle of representation, it is claimed, is not so apparent; but as a result of the fact that from time immemorial our representation has been local, we have come to believe that the locality principle is the only method of representation even for a homogeneous community. In the case of such homogeneous communities — homogeneous at any rate from the point of view of geographical variation — the locality principle of representation, it is said, is improper. For there are really no localities to be represented: and if the representative system has for its purpose to reflect the opinions of those represented, a method of representation which is based entirely on locality ceases to reflect the opinions of the people, in other words, ceases to be representative where there is a comparatively slight local variation, and makes it difficult, if not impossible, to obtain representation of opinions based on other than local causes of variation. Finally it is said, the locality system, even when based on local variation, makes it easy to elect incompetent, if not evil-

intentioned persons, particularly where it is carried so far, as is generally the case, as to insist that candidates for office shall not merely represent the localities from which they are elected, but shall also reside therein. The locality system of representation also has in the past, it is pointed out, been productive of the gerrymander, whose so frequent occurrence is itself evidence of the fact that the necessity for purely locality representation no longer exists, or any rate is not so pressing as it formerly may have been. If local variation really exists, these evils can be submitted to in the belief that the advantage of obtaining the expression and representation of opinions based on local conditions is greater than the evils resulting from the abuses of the system; but if there is no great local variation, the evils of the locality principle of representation, particularly the gerrymander, which, if carried too far, completely nullifies the theoretical advantages of the locality principle, are so great that it should be abandoned.

If, however, the locality principle is to be abandoned, what shall be substituted for it? We cannot well resort exclusively to a general ticket elected by a mere majority or a plurality; for by that system only the opinions of a majority or of a plurality, which is only a minority of all the voters, will ever receive expression. We do, it is true, commonly resort to such a method in the case of the election of executive officers. But it is to be

remembered that in theory the executive is to enforce the law rather than make it. Such a method for the election of a body entrusted with the making of the law and the determination of governmental policy, is almost universally regarded in this country as improper: The determination of governmental policy should, so far as possible, be the result of a deliberation in which all important phases of public opinion should have received expression. It is claimed, therefore, that in a community where differences of opinion are not the result of local variation, some means should be provided by which opinions not based on local variations, when held by large numbers of the voting population, should be given representation.

Here, however, it must be remembered that it is seldom, if ever, the case, that in large and even quite homogeneous communities variations in local conditions do not cause some differences of opinion, so that whatever scheme of representation of opinions in such large communities may be adopted, the locality principle of representation must receive some recognition. But that recognition should not be greater than the actual conditions demand. How, now, may we obtain in our system of representation, representation of opinions and principles rather than of arbitrarily arranged localities based upon no difference in local conditions? The answer that is most commonly given to this question is by some system of proportional or minority rep-

resentation, in accordance with which large groups of persons who desire to uphold certain principles in a district where several candidates are to be elected may so distribute their votes or organize their voting strength as to give expression to their views.

There have been many schemes proposed for realizing this desire, some of which have received actual trial in this country. One of these is the system of cumulative voting adopted in Illinois, whose constitution provides that each assembly district shall be represented by three members of the legislature and that each voter may cast as many votes for each candidate as there are representatives to be elected or may distribute his votes, or equal parts thereof, among the candidates as he sees fit.[1] Where such a plan is adopted in the constitution, of course no question as to its constitutionality can arise; but it is doubtful whether such a provision, if contained in a statute merely, would be, under the usual American state constitution, upheld by the courts.[2]

[1] Constitution of Illinois, Art. 4, Secs. 7 and 8. The General Municipal Corporations Act permits this plan to be adopted by cities.

[2] See Governor Hoffman's Message of 1872, cited in Commons, *Proportional Representation*, p. 252. Indeed, it has been held unconstitutional for the legislature to provide that no voter shall vote for more than a certain number of candidates less than the whole number, for the reason that each voter under the usual constitutional provision that electors "shall be entitled to vote at all

But even if cumulative voting is constitutional, it is questionable whether its adoption is expedient. The testimony of those having experience of its workings in Illinois is to the effect, it is true, that it has practically stopped gerrymandering, one of the greatest evils of the district system; that it gives a representation to the minority in all districts where the minority party has at least a quarter of the votes; that it is perfectly practicable in its operations, and although there is some conflict on this point, that it produces a better legislative body than the old district system in that the character of the minority representatives is better than those elected by the majority. It has, however, the serious disadvantage of permitting a large loss of voting strength on account of the inability of the voters to know how far they must concentrate their vote on one candidate. This has resulted, though not frequently, in the election of two minority candidates out of three to be elected; makes in almost all cases party discipline very strong, and favors the union of party machines so that the result of the election is apt to be decided by

elections" has the right to vote for each officer. See State *v.* Constantine, 42 Ohio St. 437, 51 American Reports, 833. Such a system of limited voting further was tried in the New York Charter of 1873, but was later abandoned as unwise. Its application in Boston is regarded in the same light. See Matthews, *City Government of Boston*, p. 13. Here it is said that limited voting "is admitted on all hands to have been a failure."

the nominating conventions.[1] Testimony of the workings of cumulative voting in England is the same as in Illinois; namely, that it is quite possible under it for the minority of the voters to control the body elected,[2] and that it necessitates strong party discipline and perfect party organization; that independent candidates have very small chances of election.[3]

The faults of the cumulative system, pure and simple, have led to the proposal[4] that the voters shall be given the opportunity to indicate on their ballots their preference for the several candidates, either by voting for these candidates in the order they are placed on the ticket, or if some other order is preferred, by marking after each candidate's name the numbers 1, 2, 3, and so on, in the order desired. Mr. Forney shows[5] that by dividing the first-choice

[1] See Forney, *Political Reform through the Representation of Minorities*, Chaps. 6 and 7.

[2] A similar system of cumulative voting was adopted in 1870 by the English school boards, and in the *Educational Review*, June, 1896, p. 2, Mr. T. J. MacNamara says "it is pretty well discredited now. It works out grotesquely. . . . A majority of the votes does not thereby mean a majority of the members elected. At the last election twenty-six 'Progressives' were returned with an aggregate vote of 706,506, while twenty-nine 'Moderates' sailed in on 602,622. Such are the surprises of the cumulative system. Shortly I hope the cumbrous divisional system will give way to single or double member constituencies and straightforward voting."

[3] See *Parliamentary Papers*, 1885, No. 275.

[4] Made originally by Burnitz and Varrentrapp. See Forney, *op. cit.*

[5] In a paper which has not yet been published, and in which

votes for each candidate by one, the sum of the first and second choice votes by two, and the sum of the first, second, and third choice votes by three and so on, and by declaring those candidates having the highest of such quotients to be elected, up to the number of positions which it is desired to fill, the difficulty of distributing the votes under the cumulative system pure and simple would be avoided, the preferences of the voters would be indicated, and minority representation, which is at the same time mathematically proportional, would be secured. All of these advantages, it is said, would be secured without complicating the process of voting. On account, however, of the fact that the processes of counting the votes are somewhat complicated, it is not believed that such a system would be applicable in a constituency electing more than nine representatives. Further, it is believed that such a system of voting would not violate any of the ordinary constitutional provisions. The provision which has been considered as preventing the adoption of any system of cumulative voting is the one which says that each voter shall be entitled to vote at all elections, and has been interpreted as meaning that each vote cast at an election shall be equal in value to any other vote cast.[1] It can be shown that by Mr. Forney's

he proposes a modification of the original Burnitz system to prevent the election of the majority of candidates by the minority party.

[1] See Governor Hoffman's Message cited *supra*, p. 154.

modification of the Burnitz system of preferential voting, under no circumstances is one vote counted more than once. In other words, there is no cumulation of votes.[1]

Finally, it is possible to apply the principles of the Burnitz system to elections for single constituencies including mayoralty elections. It is often the case that where a plurality is sufficient to elect, which is the usual rule in this country, the candidate elected will be elected by a minority of the electors. To avoid this the election laws on the Continent of Europe sometimes prescribe that if on the election no candidate receives a majority of the votes, another election shall be had, when all voters shall be confined to voting for the two candidates having the highest number of votes at the first election. While such a system has the advantage that under it the candidate elected will always have a majority of the votes cast, it has the serious disadvantage of doubling the work of the elector and the expenses of election. If one of the princi-

[1] Thus suppose a party has 450 votes and distributes them in such a way as to give candidate A 228 first-choice votes, and 222 second-choice votes, candidate B 222 first-choice votes and 228 second-choice votes. Such a distribution gives the greatest possible effect to the party vote. In no case can the quotient of either of these candidates be greater than 225 (that is, the sum of 228 and 222, namely 450, divided by 2), except a greater number than 225 be cast as first-choice votes, as in the case of A, who receives 228 first-choice votes, and who is therefore entitled to 228 as his elective quotient.

ples lying at the basis of the Burnitz system of counting the votes is adopted in these cases, it is believed that all of the advantage of an election by majority may be secured, and at a single election. If the voters' actions in the case of the two elections are analyzed, it will be found that they consist in expressing a first and a second choice. There is no reason why this may not be done at a single election. It might be provided that every voter shall mark on his ballot his first and his second choice, no one being allowed to indicate as his second choice the candidate who had received his first-choice vote; and that if after the count of the first-choice votes, it is found that none of the candidates has a majority of such first-choice votes, all second-choice votes for the two candidates having the highest numbers of first-choice votes shall be counted for such candidates; the candidate receiving the highest number of such first and second choice votes to be elected; in case of a tie, the candidate having the greatest number of first-choice votes to be preferred. If such a scheme were adopted, all danger of the election of the mayor by a minority would be avoided, a single election would be all that would be necessary; all the demands of political justice would be satisfied, and nothing but what was reasonable would be demanded of the voter.[1] If it is deemed advisable to adopt the principle of minority or proportional

[1] See also Remsen, *Primary Elections*.

representation, the Burnitz system as modified by Mr. Forney would seem to be the best yet devised, both because it is the simplest, and because, with the modifications proposed above, it is capable of adaptation to single member constituencies, among them being included mayoralty elections.

The representation of opinions may also be secured by some one of the different systems of so-called "proportional representation." These are practically all based on the proposition that the voters are to be confined to voting for party candidates officially put in the field before election. Such a limitation of the voter's freedom of action, it is not certain, is constitutional.[1] If it is not re-

[1] The question has arisen under the recent Australian Ballot Acts whether the legislature may, under the usual constitutional provisions, provide that the individual voter shall be confined in voting to choosing between candidates regularly put in nomination before the election. The cases of Bowers *v.* Smith (111 Mo. 45, also reported in 33 American St. Repts. 491) and Allen *v.* Glynn (18 Colo. 338, also reported in 31 American St. Repts. 304) would seem to indicate that such action is unconstitutional. These cases are not, however, directly in point, although they seem to be decided upon the theory that such action would be improper. On the other hand, the case of State *v.* McElroy (44 La. An. 796, 32 American St. Repts. 355) holds explicitly that a statute requiring the names of all persons to be voted for to be printed on one ticket or ballot is constitutional, and that ballots upon which a name which had been printed had been erased and another name written in its place, were under such a law illegal ballots and could not be counted. A somewhat similar case is that of Parvin *v.* Wimberg (130 Ind. 564, also reported in 30 American St. Repts. 254). This holds that the legislature may pass statutes in order to provide for the secrecy of

garded as constitutional so to limit the voter, of course the constitution can be changed so as to admit of this limitation of his rights, or of any method of representation or voting deemed to be desirable. A plan of proportional representation which has been received with favor is a combination of proportional representation pure and simple; that is the "free list plan" in use in Switzerland and "limited voting," so as to give some effect to the individual preferences of the voters. A bill has been drawn up formulating this plan in the work on *Proportional Representation*,[1] recently published by Professor J. R. Commons. By it elections are to be by general ticket, in large cities or in the state the territory being divided into districts in

the ballot, which invalidate all ballots cast where the voter's choice is not indicated by placing a stamp in a square either at the head of the ticket or by the side of the names of each of the candidates. Another case holding to the same rule is that of Taylor *v.* Bleakley (55 Kas. 1, reported in 49 American St. Repts. 233). Appended to the report of this last case in 49 American St. Repts. 240, is a monographic note upon the Australian Ballot Law, particularly upon what distinguishing marks will invalidate the ballot. The general purport of this note is to the effect that in order to provide secrecy for the ballot, the legislature has the constitutional power to declare all ballots illegal which have any marks upon them that will aid in the identification of the ballot, and therefore in destroying its secrecy. The result will follow then, that if this rule of law is regarded as the proper one, the legislature may oblige the voter to choose between the candidates put in nomination before election, and that this objection to the proportional system of representation will cease to have any effect.

[1] P. 119.

order to give recognition to the locality idea, each district electing several, preferably a reasonably large number of members of the council or legislature, as the case may be. Voters, by this plan, would seem to be confined in their choice to the tickets put in the field,[1] each of which may include a list to be printed separately of candidates less in number than the number of places to be filled. Candidates may be placed on several tickets, but they must choose in favor of one of them. If they do not so choose, they are assigned to one of the tickets by lot, and in each case votes cast for them count for their ticket as well as for them individually. Each voter has as many votes as there are persons to be elected, which votes he may distribute as he chooses among the candidates, giving not more than one vote to any one candidate; and votes thus cast are known as "individual votes" and count both for the candidate receiving them and for the ticket to which the candidate belongs. If the voter does not use the total number of votes to which he is entitled by voting for that number of candidates, the remainder of his votes are known as "ticket votes" and shall be counted for any ticket as a whole which he may designate. If he does not so designate a ticket, only his "individual votes" are to be counted and his ballot as a whole

[1] This, however, is not a necessary part of the scheme of proportional representation, though considerable complication in counting the vote will follow if it is not adopted.

will be void if he designates more than one ticket. The individual and ticket votes are to be cast as under the present New York law; that is, by marking, in the one case, the name of the candidate and in the other, the ticket. The votes cast are to be counted in such a way as to indicate both the individuals and the tickets. The total number of ticket votes, that is, including "ticket votes" and "individual votes" cast for the ticket, is to be divided by the total number of persons to be elected, and the quotient, ignoring fractions, is to be the "unit of representation." Then the number of votes (both "ticket" and "individual") cast for each ticket is to be divided by the "unit of representation," and each ticket shall be entitled to a number of persons to be elected, equal to the quotient thus obtained, ignoring fractions. If the sum of the quotients thus obtained be less than the number of seats to be filled, the remainder is to be given to the ticket or tickets having the largest remainder or remainders. After thus obtaining the number of seats to go to each ticket, such seats are to be given to the persons on the ticket receiving the highest number of individual votes. In case of a tie the lot decides. Finally, if the ticket obtains more representatives than there are candidates, the number of seats to be filled is distributed among the other tickets in proportion to votes cast. In case a vacancy occurs in any seat, the candidate who received at the last election the greatest number of

votes after the last one elected, in the party or group in which the vacancy occurred, is chosen to fill it.

There are several objections to this plan; some are constitutional, some are general. The former affect all kinds of proportional representation, whose result will give an elective office to one who has less than a majority or plurality of votes. Like the objection noted above to confining the voter's choice to the candidates nominated, this might be done away with by a constitutional amendment. The other objections are rather to the particular method proposed than to the general scheme of proportional representation. In the first place, this kind of proportional representation is applicable only to elections for members of a comparatively large body. It is absolutely inapplicable to the election of a single officer, like the mayor, and the mayor is often as unrepresentative of a city as is its council. In the second place, it will be remembered that in case a seat or seats remain to be filled after apportioning the seats in the legislative body to the various parties by the application of the exact "unit of representation," such seat or seats are to be given to the party or parties having the largest remainder or remainders. This is the system called in Europe that of "forced fractions." It was tried in the Swiss Canton of Ticino in 1890, and led to such unlooked-for results that it was abandoned in 1892,[1] when a system

[1] Law of December 2, 1892.

which has been adopted also in Neuchâtel was introduced. This consisted in giving the remaining seat or seats after the distribution of seats in accordance with the unit of representation to the party or parties casting the largest vote or votes instead of to the party having the largest fraction or fractions after the distribution. A hypothetical instance of what may result from the system of "forced fractions" in a three-cornered constituency is given in *La Représentation Proportionnelle*.[1] Suppose that there are in such a district 3000 voters, and three parties with a voting strength of 1600, 750, and 650 respectively. We have then 1600 votes belonging to party A, 750 votes belonging to party B, 650 votes belonging to party C, with three seats to fill, a total of 3000 votes, which, divided by three, the number of parties, gives 1000 for the "unit of representation."

Parties	Votes	Unit of Representation	Candidates elected
A	1600 ÷	1000 = 1 plus a remainder of 600	1
B	750 ÷	1000 = 0 plus a remainder of 750	1
C	650 ÷	1000 = 0 plus a remainder of 650	1

A will get one seat, but so will B and C. The result is that a majority of the total number of voters will have a minority of the seats. The

[1] Vol. II, p. 78.

tendency will be for the minority party to split up into factions, which, if done with sufficient ability, may easily lead to the above result. This is not merely a theoretical objection. It was what actually happened in the Canton of Ticino under the law of 1890, which adopted the system of "forced fractions." In the report of the commission appointed to look into this matter by the Canton of Neuchâtel[1] it is said: "Every one remembers that the parties in Ticino . . . organized by shrewd subdivisions to obtain the benefits resulting from having the largest remainders." Too much weight, however, should not be given to this objection, since such a result as is seen in the instance given above is not liable to occur where the constituency is large and elects five or seven members. The method of obtaining the "unit of representation" or elective quotient proposed by this plan has also been abandoned by the latest Ticino law; namely, that of December 2, 1892. Mathematical calculations prove that it is fairer to add one to the number of seats to be filled and divide the votes cast by the total thus obtained than to use as divisor the number of seats to be filled. Further, this system of voting is very complicated, and complicated in just the point where it ought to be simple; *i.e.* in the method of marking the ballot. It may well be questioned whether the average voter has sufficient intelligence to vote with judgment by this method. The Swiss

[1] *La Représentation Proportionnelle*, Vol. 10, p. 278.

plan pure and simple is preferable on this account. Here the voter is confined to the tickets which he must vote straight and does not vote for individuals: and those candidates placed first on the tickets are elected, each ticket electing a number of candidates proportionate to the number of votes cast for it. Such a method of voting, however, makes the party machine supreme.

Finally, it must be admitted that there are so many plans of "proportional representation," in each of which its advocates have the greatest confidence, that it may be well to wait before adopting any one of them until greater agreement is reached by the believers in this system of representation. This is particularly true, since Switzerland seems at the present time to be a place for experimentation. There are at least three different plans in operation there; namely, that of Ticino, Neuchâtel, and Geneva. The experience of the Swiss may help us to determine the question.

But whatever method of representation or voting may be adopted, too much ought not to be expected from this particular reform. Our past experience should lead us to remember that minority representation twenty-five years ago was as enthusiastically advocated as is proportional representation or preferential voting now. But wherever adopted, it has failed to fulfil the anticipations of its supporters. Means were found not only to neutralize the good effects which were

anticipated from its adoption, but also to make use of it to increase the power of the party machine. The same thing may happen again. Finally, it is to be remembered that even if some sort of minority for proportional representation is adopted, the majority will rule and ought to rule, and it seems doubtful, to say the least, if any system of proportional representation will bring into our legislative assemblies a much better majority. Minority representation, as seen in Illinois, cannot be said to have done so, although practically all the testimony is to the effect that those members of the legislative bodies elected by the minority have been rather better in character than those elected by the majority. The advocates of proportional representation have very strong hopes that the adoption of this system will, on account of its provision for a general ticket, result in the election of men of better character to the various legislative bodies. Perhaps they are right — perhaps not. There is nothing, however, in the experience of the countries which have adopted it, to make us expect a great improvement in the character of the persons to be elected by the system of proportional representation.[1] Further, almost everywhere where proportional representation has been adopted, it has

[1] As Mr. Matthews says (*The City Government of Boston*, p. 14): "It would be foolish, indeed, to expect that . . . any reconstruction of our municipal legislature will remove all difficulties in the way of securing an economical and business-like government.

been adopted in order to remedy the abuses of the general ticket combined with election by majority or plurality. Election by general ticket generally results in a representative assembly in which there is no minority, or, where there are three parties and a plurality vote is sufficient to elect, in an assembly not only in which there is no minority, but which actually represents a minority of the voters. A good example of this fact is to be found in a late election in Marseilles. Here there were three parties, — the Conservative, the Liberal, and the Socialist. The election was by general ticket and the Socialist party, although having a minority of the actual voters, still contained the largest group of voters, and the result of the election was a municipal council in which every member elected was a socialist. These facts explain the ardor of the advocates of proportional representation in Switzerland and Belgium. They certainly do not justify us in supposing that a better majority will, as a result of its adoption, be elected to our city councils. It may be worth while to try some system of minority representation, preferably, on account of its simplicity, preferential voting with the Forney method of counting the votes described above; for the ordinary American Common Council could not be much less representative than it

The representatives of the citizens, howsoever elected, will continue to represent with more or less fidelity the wishes and principles of their constituents."

has been in many cases under either the general ticket or district ticket system of representation which we now have; and whatever may be the practical success of preferential voting, it has in its favor the theoretical advantages of justice and of being adapted to present municipal conditions.

In the second place, universal suffrage ought not to be held responsible for many of the evils for which it is made responsible, but which it is believed result from the imperfect character of all representative systems. No matter what may be the method adopted for insuring representation, it is very likely that the persons elected will cease after a time to represent the opinions of the people who elected them and whom they may have represented at the time of the election. Such a misrepresentation of the people is much more likely to happen under our present system of reliance upon parties for the choice of candidates to be voted for. For at the time the candidates are put in nomination, not all the questions which these candidates are to decide, if elected, will in the nature of things have been discussed. Further, it is difficult, if not impossible, to organize parties after the manner of existing political parties which will give prominence to more than one or two issues. Many an elector, at the present time, is obliged to vote with a party which does not clearly express or even express at all his views on particular matters. It is on this account, as well as because of the fact

that our present representative and party system seems to bring almost regularly into power so many incompetent if not corrupt men, that the people have more and more been limiting the powers of representation which they give their representatives, and have been more and more assuming the power themselves to determine questions of policy.

This is seen, in the first place, in the greater length and detail of the later state constitutions. Bryce points out[1] that the first constitution of Virginia, of date 1776, contained about 3200 words, and that the present constitution of that state, of date 1870, contains 17,000 words; that the first and only constitution of New Hampshire contained apart from the preamble about 600 words, while the present constitutions of Missouri, of 1875, and of South Dakota, of 1889, contain more than 26,000 words. The greater detail of the later constitutions, containing as they do many provisions of private and administrative law, in addition to constitutional law in the scientific sense of the words, has made it necessary to amend them or completely remodel them frequently. Raccioppi[2] thus calls attention to the fact, that in the eighty-four years from 1776 to 1860, there were 69 new constitutions and 100 amendments; that in the twenty-seven

[1] *American Commonwealth*, 3d ed., Vol. I. p. 454.

[2] In his *Nuovi Limite e Freni Nelle Institutioni Politiche Americane*, p. 193.

years following, there were not less than 35 new constitutions and not less than 114 amendments; that finally six new constitutions and 28 amendments were rejected by the people from 1876 to 1886. Finally, Bryce says [1] that Arkansas, whose first constitution dates from 1836, has had five constitutions besides making frequent amendments, while Pennsylvania has had four.

Again, it is not unfrequently the case that the newer constitutions provide for submitting the decision of various matters either to the people of the state as a whole, or to the people of the particular localities to be affected by the decision.[2] This is quite common in the case of borrowing money or undertaking some large public work, as, for example, the case of rapid transit in the city of New York. Further, as Bryce points out, the legislature frequently, when not required, submits questions to the people for their consideration, in order that after their decision has been expressed it may be guided in its action accordingly. The question of the greater New York, which was submitted in 1894 to popular vote, is one of the most important recent instances of this practice.

Although it is recognized that this practice must, if carried much further, result in the destruction of the representative system, the practice is generally

[1] *Op. cit.*, p. 456.

[2] See an article by E. P. Oberholtzer on "Law-making by Popular Vote," in *Annals of American Academy, etc.*, Vol. II, No. 3, p. 36.

favorably regarded in the United States and is so regarded because the people do not, at the present time, believe that under the present system they are being represented in the various legislative bodies. But it is very doubtful whether present conditions admit of a much more extended application of the principle of direct legislation of which the instances cited are examples. This is particularly true of the method of direct legislation to be found in constitution making and amending. The formalities to be complied with are so formidable, and the process is so slow, that many matters which need attention cannot be attended to properly under such a system. Again, the method of submission by the legislature to the people of questions upon which it wishes their advice is unsatisfactory, since there is no way of insuring that their advice will be taken. It may be possible that certain questions of municipal policy, such as the incurring of a large debt through the undertaking of an important public improvement, can be decided by the city electors, without harm to the municipal welfare. But such questions must be very simple and easy of comprehension. It is certainly impossible to substitute absolutely direct legislation for representative municipal government.

There is, however, one part of our governmental system where direct legislation has been successfully in operation during our entire history. That is the town meeting in New England. Indeed, in

the largest New England city the plan was in operation up to 1822, but with the growth of population the town meeting became impossible of application and had to be abandoned. As the oldest of Teutonic institutions and as providing most completely for a direct expression of the people's wishes, it has been the goal of many interested in governmental reform, who have suggested ways in which it might be adopted, so as to fit other conditions more complex than those in which it has been successfully in operation for so many years. Two of these plans have received greater prominence than others. One is due to Mr. Albert Stickney[1] and has been somewhat further elaborated and developed by Mr. S. E. Moffett in his recently published *Suggestions on Government*. It proposes the formation of permanent districts all over the country, in the city as well as in the country, in which "Precinct Assemblies," as they are called, shall be formed. These bodies, of from 50 to about 1500 voters gathered together on the neighborhood plan, shall elect the members of the various legislative assemblies, including the city council, which shall appoint and remove the chief executives of the various governments. The chief executives are to have the appointment of all subordinates, and in order to make all officers responsible to the source of power — the people — each appointing officer shall have the power to remove all his ap-

[1] Proposed in his book entitled *The Political Problem*.

pointees, while the people in their precinct assemblies shall have the right both to recall at any time the officers they elect, and to veto, under certain conditions, any law or resolution voted by their representatives. The other plan, which was published twenty years ago, is due to Dr. Clark, of Oswego, New York. Although not so elaborate nor so complete in its details, being proposed only for cities, it is based upon somewhat the same principle as the one just described. It discards, however, the neighborhood basis of the other plan, as offering an opportunity for the gerrymander and the abuses of the present primary meeting, and provides for the grouping together of the people of large sections of the cities by lot, in groups of not more than 250 each. Each of these groups is to elect an "elector," and the "electors" thus formed elect the mayor and other elective officers, and the member representing the particular section in the municipal council or other deliberative body of the city government. All such elected officers may be removed at any time by a vote of the "electors." This latter plan received the approval of the voters of the city of Oswego; a bill to provide for its adoption was prepared, and, in 1894, passed the legislature of the state of New York, but was vetoed by the governor.[1]

[1] The plan is fully described in the *Proceedings of the Cleveland and Minneapolis Conferences for Good Government*, in a paper written by Dr. Clark, p. 524.

Such are two of the plans proposed both to reform the present unsatisfactory method of representation, and to give the people more control over both the officers whom they elect and the legislative measures to be adopted. At the present time both appear too radical to justify the hope of their adoption. Both, further, are based upon the belief that the same political activity can be expected from the urban as from the rural citizen. Both assume that because the town meeting has worked successfully in the rural districts, it will also work well in urban districts. Both are thus rather theoretical than practical, taking no account of the peculiar conditions of modern urban life. But, as will be pointed out in the next few pages, measures of a similar character, or at any rate based on a similar false analogy, have been woefully unsuccessful.

Finally, it has been felt by many that the evils that are attributed to universal suffrage may be due to the fact that too much has been demanded of it. The principle of election as a means of filling almost all offices, whose functions are not merely clerical and ministerial in character, was introduced about 1830. The movement reached its culmination about the middle of the century, by which time almost all important state, county, town, and city offices had become elective. The abuse of the appointing power in our early political history was undoubtedly largely responsible

for the general introduction of the elective principle. The adoption of this idea may be due also to the overweening confidence in democracy by which the early part of this century was characterized. It was generally believed that democracy had worked successfully in the rural localities where the elective principle had been adopted at a very early time, and it was natural to suppose it would work well in the cities, which, it must be remembered, were by no means so large as now, and in which the population was much more homogeneous than now. But whatever may have been the justification for the belief in democracy, with its principle of election, which, of course, lies at the basis of all popular government, it was soon found that the concrete manifestations of the people's will, expressed in accordance with the way provided by law, were in many cases anything but wise; that many officials who were presumably the people's choice were guilty of both inefficiency and criminal conduct. The experience through which the people of our cities passed soon after the elective principle was generally introduced into the city organization led them in many cases to abandon the idea of popular government for cities, and to resort to an extreme centralization in the hope that the state government, under which the municipal government of the larger cities became so generally centralized, might represent a more enlightened public opinion than it was be-

lieved could be found in the cities themselves. The centralization was in some cases administrative; in other cases it was legislative. But in all cases the city was deprived of many of its rights of local autonomy. Believing in the political capacity of the native population which, it was thought, had been amply proven in the success attending the national, and, to a lesser degree, the state government, the reason most commonly alleged at the time, and indeed at the present time, for the failure of popular government in the cities, was the presence therein of so many persons of foreign birth, who had been admitted to participation in municipal affairs before they had familiarized themselves with our ways of thinking and doing, before, in other words, they had been assimilated. Believing that this was the cause of our failure, the municipal populations, or at least the most intelligent portions thereof, were willing, as are the people in some of the Southern states at the present time, where there is a large ignorant negro population, to surrender their political privileges. They hoped by the surrender to get good government, caring little, if only the government were good, what might be the method by which it was obtained.

It is, however, to be doubted if the cause assigned for the evil municipal conditions of the middle of this century was the correct one. "The city of Portland, Oregon,[1] presents an interesting

[1] See an article on the "Municipal Condition of Portland," by

example of the spontaneous growth of extravagance and corruption in municipal affairs in a place and under circumstances where there would seem to be no inducing causes. In January, 1860, it was an isolated village of 2917 inhabitants, nestled in a little opening in the apparently endless forests of the Douglas fir that then covered its present site. Its growth has been steady and unbroken, and it is now a beautiful city of 75,000 inhabitants in the midst of a cultivated district, with environments and advantages unsurpassed by any city of its size in the world. It has been particularly happy in the character of its inhabitants, and from its very isolation has escaped the great European outpouring to which New York and other cities have been subjected. No gold mines in its vicinity have developed the gambling spirit that at one time was so manifest in San Francisco, yet it has prospered in perfectly legitimate ways until it has become one of the wealthiest cities of its class in the world. For much of its career isolated, with a cultivated, conservative, and American population, abundantly prosperous, and with rare surroundings of refinement and beauty, the people of Portland have had an almost unique opportunity of showing their capabilities as city builders, and yet, after all, they have evolved only the weak, corrupt municipal government unfortu-

Thomas N. Strong, to be found in the *Proceedings of the Minneapolis and Cleveland Conferences for Good Government*, p. 432.

nately common to this country. The people intent on making money allowed a few politicians from time to time, by struggles among themselves, to determine the right to the possession of the city, and whoever acquired control was allowed to do what he would with all of its departments. For over thirty years not one citizen in ten knew what the annual tax levy was. At almost every term of the state legislature a new city charter was either projected or enacted, and so absorbed were the people in their private affairs, and so easy were they in their fool's paradise, that it is said that the contents of the last city charter, enacted two years ago, were only known before its passage to two members of the legislature. . . . It is apparent from this city's experience that all of this municipal extravagance and corruption has grown under American cultivation and upon American soil, from causes inherent within themselves. No question comes in of 'unrestricted emigration' or 'universal suffrage.' The isolated condition of the city for so many years has absolutely prevented the first, and its steady growth as a cultivated and moral community, and the high character of its citizenship, has minimized the evils of the latter. It seems to me that, encouraged and permitted by the public indifference born of continued prosperity, political partisanship is chargeable with almost the entire mischief."

While our municipal misgovernment is in large

part undoubtedly due to the indifference of the people in the cities to matters of government so long as they may devote themselves to the accumulation of wealth, while this may have been the sole cause of the misgovernment of Portland, it is without doubt that in almost all instances one cause of the trouble is to be found in the inapplicability to the government of a large city of the elective principle as the common means of filling office. While we may give in our adhesion to the general principle of popular government, we may still believe that the elective principle is not the proper one to be generally applied in large centres of population. Indeed, the conditions are quite dissimilar from those which exist in the rural districts where the elective principle had first been tried, and where it has been undoubtedly quite successful both in producing reasonably good administration and in expressing the popular will. These conditions are dissimilar in two respects: In the first place, in the rural districts the feeling of neighborhood is strong, and the people, knowing personally most of the candidates who present themselves for office, are in a position to make a wise choice. In the cities, on the other hand, the feeling of neighborhood is not strong. Further, it never can be strong in cities like the American cities, where the population is so fluctuating and changing as it is. It will, therefore, be difficult, if not impossible, for the people in the cities to know much person-

ally about the merits of any large number of candidates. Further, in the cities, offices are much more numerous than they are in the rural districts, and if a great number of offices is to filled, many of which are subordinate and comparatively unimportant, even the most intelligent elector is apt to become confused, and is, therefore, liable to vote the "straight ticket" of the party with which he acts on state or national issues, regardless of the fact that the officer for whom he is voting has no duties which can exercise any influence on the issues of state and national politics, thus allowing municipal questions to be decided by other than municipal considerations. In the "Report of the Commissioners appointed to inquire concerning the Mode of Appointing and Remunerating Certain Provincial Officials now paid by Fees" in Ontario, Canada,[1] the commissioners, after an investigation of conditions in Canada and the United States, advise the retention of the present system of appointment. They say:[2] "The method of appointment to office aims at economy of power, unity of purpose, and efficiency of action; the method of election subordinates everything to popular control. Now the advantage of popular control is entirely illusory where the electoral constituency is counted not by hundreds but by thousands." As President Low says:[3] "Greatly to multiply important elec-

[1] Toronto, 1895. [2] On p. 25.

[3] Quoted from Bryce, *op. cit.*, 1st ed., Vol. I, p. 614.

tive officers is not to increase popular control, but to lessen it."

In the second place, the administration of a municipality is more complex than that of the rural districts. The presence of a vast number of people in a small section, of itself presents problems which require for their solution a large amount of technical knowledge and skill. The rural highway becomes the city street, which must not only sustain an immense amount of surface traffic to which the rural highway is not subjected, but must serve as a means of conveying under its surface water, gas, heat, electricity, and sewerage. Often, in the case of the large cities, the street is made use of as a means of carrying passengers and merchandise beneath its surface. The care of the public health in the rural districts is a comparatively simple matter, consisting in the adoption of simple remedial measures when any case of contagious disease appears. Unobstructed light and free circulation of air may be trusted to act as preventives to disease. In the city, on the other hand, greater care must be taken to prevent the existence of nuisances, more energetic measures must be taken to stamp out contagious diseases, because of their greater liability to spread, and because of the rapidity with which they will spread if once allowed to get a foothold. Not only do branches of administration for which there is some provision in the rural districts become more com-

plicated in the cities, but also many matters which can in the country be left to private initiative become in the city subjects of governmental action. Thus, we may trust to a man's self-interest in the country to build his house as he may see fit. If it falls or burns as a result of defective construction, he has only himself to blame, and he and his immediate family are in the nature of things the only sufferers. In the city, however, the falling down of a building means possibly the loss of many lives, lives of persons who could not individually protect themselves against such a contingency. In case of a fire, the destruction resulting from faulty construction of one house may, notwithstanding the best remedial measures, be widespread. In the country, again, we may trust a man's self-interest to convey the garbage and waste matter necessitated by the exigencies of domestic life to some place where they will not be offensive to him or breed disease. In the city, however, no private initiative with the best of intentions on the part of individuals could attend to the matter. In the country men may be left to provide themselves with good potable water. In the city this must be done through the exercise of some governmental power. These things, if they are to be attended to at all, must, in most cases, be attended to by the city government. In attending to some of them, the highest amount of technical skill is required. In attending to all of them, harmony in administrative

action and continuity in administrative policy are absolutely indispensable, if advantageous results are to be expected. It is when attending to such matters as these that the claim is often made that the city is acting as a business corporation. But it is only in so far as these things should be done in a reasonable manner and with the least expense that they can be regarded as assimilated to business affairs. And in this respect a city differs in no way from other institutions of government, inasmuch as the performance of almost all these duties requires the exercise of sovereign powers. These affairs are still affairs of government, and are to be judged by the *criteria* of government, rather than by those of business. Thus, in offering its citizens water, a city acts not so much for the purposes of gain as because it is believed that water is absolutely necessary to the welfare and health of the people and must be had even at great expense. But while the resemblance of municipal action to commercial action is thus slight, it is none the less true that the technical skill required is as great, it is indeed the same in kind, as if the matter were one of business; and somewhat the same methods should in the nature of things be followed in obtaining it as are followed in private enterprises of a similar character. And it would certainly be absurd to say that the elective principle generally applied is one of those methods. As a chief justice of Wisconsin once

said, "Where you want skill, you must appoint; where you want representation, elect."[1] "This rule must be the guide to a very large measure of municipal reform."[2] Not only is it true from the point of view of theory; it is also the teaching of experience. In England, France, and Germany, where municipal government, as compared with the municipal government in the United States, has been such a success, hardly a single municipal officer who has to do with the technical part of administration is elected by the people. All, with the exception of borough auditors and assessors to revise the election lists in the English boroughs, who are elected by the voters, are appointed.

But what has been said must not be construed as being an arraignment of the elective principle *in toto*. While it is asserted that "where you want skill, you must appoint," it is as confidently believed that "where you want representation," you must elect. Where, now, do we want representation? It may be safely asserted that the council, as the legislative body of the city, the ultimate determiner of its policy, should be chosen by election. No scheme of municipal government has ever provided for an appointed city council, which, in most

[1] See *Proceedings of the Minneapolis and Cleveland Conferences for Good City Government*, p. 122, an article on the "Municipal Government of Milwaukee," by General F. C. Winkler.

[2] *Ibid.*

cases, would of necessity have to be centrally appointed, except in such a centralized system of administration that local self-government was impossible.[1] Such centrally appointed city councils were provided by the Napoleonic administrative centralization, but in any country which has even the elements of local government, the idea of a centrally appointed council is preposterous. But should the mayor be elected by the people, or appointed by the council? What does he stand for, — skill or representation? That depends very largely upon the position of the mayor in the municipal organization, and upon the position of the city itself in the scheme of government. If the mayor is something more than the president of the council; if he is really an executive officer to a degree independent of the council; and if the city and its officers are called upon to execute laws of a general character, that is, if the city is an important agent of the general state government, as it is under the scheme of American local self-government, then the mayor as well as the council stands for representation, and should be elected by the people. If he is, however, merely the

[1] The present Board of Estimate and Apportionment of New York city, which discharges many of the functions usually discharged by the city council, is a partially appointed, although a locally appointed body. That is, the mayor, one of its five members, appoints two other of its members, *viz.* the President of the Department of Taxes and Assessments and the Corporation Counsel.

president of the council, or its ministerial agent, and if the city is primarily an organ for the satisfaction of local needs, the mayor should be appointed. American development in municipal government would seem to assign him the first position rather than the second. The normal American municipal organization vests the executive power in the city in a mayor independent of the council, and naturally and rightly, therefore, provides for his election. Beyond the council and the mayor it is difficult to see why the principle of election should apply. It is indeed quite common, though not by any means universal in the United States, to provide for the popular election of the head of the finance department of the city. But it is doubtful if much advantage is derived from the practice, and it is certain that conflict and lack of harmony in municipal administration often result. Equally as effective control over the finances of cities may be provided in some other way; as, for example, by a central audit of accounts. In the larger cities the elective principle has already been much limited, and already much good has resulted. Few persons, it is believed, would advocate a return to the old system of election. But even in the larger cities, particularly those cities which discharge the functions of counties, much more may be done. There is no reason why registers of deeds, sheriffs, county clerks, and coroners should still be elected. The functions discharged by them might be given

to the cities where county and city lines are identical, or they might be appointed by the governor, as they were originally. So long as so many officers are to be elected, the voter will be apt to be confused, and universal suffrage will be held responsible for evils which result really from the fact that too much is demanded of it. Further, the reduction of the number of offices to be filled at any one election by popular vote would facilitate the easy execution of a more nearly perfect ballot law than we now possess. The ballot law which has recently been so commonly adopted in this country was, in England, from which we borrowed it, framed for a political system where very little demand was made upon the elector compared with what is made upon him under our system of elective offices. Originally governing only parliamentary elections, it demanded a vote for one office merely. It has since been extended to municipal elections. These, however, come at a different time from the parliamentary elections, and themselves have been confined to very few offices; roughly speaking, only the members of the local council.[1] Not only will a reduction of the number of officers to be voted for facilitate the adoption of a more satisfactory ballot law, but it will also make it much

[1] It is true, in the English cities, revising assessors for the election lists and borough auditors are elected. But when these officers are included in the list, we find only three to be filled by the elector at a municipal election.

more easy to adopt some system of representation or voting more equitable than we now possess. Most of these systems are of necessity somewhat more complicated than the present methods of general ticket or district representation, with the election by a majority or plurality. This complexity, which is necessary because of the desire to obtain just representation, makes their adoption very difficult under our present system of numerous elective offices.

These are some of the details in which changes will undoubtedly be made before the system of universal suffrage in municipal government is abandoned. We can well afford to wait until further experiments are made on these lines before abandoning a plan for the participation of the people as a whole in the government, which has so much to be said for it from the theoretical point of view, — a plan which not only has great educational advantages, but which, if properly organized in its details, tends to avoid much of the necessary collision between a governing and a governed class. Finally, before beginning an agitation in favor of the abandonment of universal suffrage, a result which it has been shown need not even now be regarded as impossible of accomplishment, we can afford to wait and see what are the effects of universal suffrage in the municipal government of France. Here we have a system of municipal government differing in many details from our own, —

if we can rightly be said to have any system, — a system in which municipal affairs are more clearly differentiated from central governmental affairs, which is subjected to a responsible administrative, rather than to a legislative control, and in which the functions of administration — that is, skill — are distinguished from those of legislation, that is, representation. Universal suffrage combined ordinarily with a general ticket and election by plurality, with, however, a longer residence qualification for voters than is usually required in the United States, was introduced into the municipal government in 1884, and so far it cannot be said that it has been a marked failure. Dr. Shaw, in commenting upon its effects upon the councils which ultimately determine the municipal policy, as well as elect city executive officers, says, that "The municipal councils of France fairly reflect the prevailing standards of personal uprightness and honesty, and in large towns, as well as in smaller ones, the intelligence of the community is very well represented." He does, however, add that the effect of the act of 1884, which adopted universal suffrage, "has been to bring in a larger number of workingmen's representatives in the councils, and to replace the more conservative political elements by extreme radicals and socialists." And he is inclined to entertain the view that "in the present decade the French councils have been less substantial and responsible bodies

than those of the large English and German towns [where universal suffrage does not obtain], while far superior in these qualities to those of American cities of corresponding size." [1]

[1] *Municipal Government in Continental Europe*, p. 180.

CHAPTER VIII

MUNICIPAL GOVERNMENT AND THE NATIONAL POLITICAL PARTIES

At almost every meeting which is held at the present time to promote the cause of municipal reform, it is claimed that the interference of the national and state political parties is responsible for a large part of the admitted evils of American municipal government. Clubs and associations have been formed for the purpose of calling attention to the dangers resulting from the attitude assumed by these political parties. One of the most recent state constitutions contains an article intended to sever the connection which exists between municipal and national and state politics. This is fully explained by the address of the majority delegates, which says: "We seek to separate in the larger cities municipal elections from state and national elections, to the end that the business affairs of our great municipal corporations may be managed upon their own merits, uncontrolled by national and state politics; and to the end, also, that the great issues of national and state politics may be determined upon their

merits, free from the disturbing and often demoralizing effects of local contests." Yet, notwithstanding this complete recognition of the evils resulting from the attitude of the national political parties, with the exception of the adoption of the remedy proposed in separate municipal elections, municipal reformers have for the most part contented themselves with expatiating upon the evils of our present conditions, and in calling upon both all good citizens to decide municipal issues free from party prejudice, and the political parties to keep their hands off of municipal government. But the habit of determining municipal questions in accordance with party considerations is at present too fixed in our political life to permit of success following this method of action. The municipal election of 1894 in New York is a good example of this fact. The successful party at this election was nominally a municipal party. Its platform laid great emphasis on the divorce of municipal questions from state and national party considerations. It was in reality, however, a combination of one of the national political parties with factions of the other national political party, and of organizations small in numbers and weak in real voting strength which were really based on the "non-partisan" idea, as it is called. Notwithstanding the platform of the party and its nominally "non-partisan" character, its subsequent behavior, both in its nominations, and in most of the

appointments made by its nominees who were afterwards elected, and the subsequent attitude of the majority of the people of the city of New York as seen in the elections of 1895, showed most clearly that at the present time the idea of a municipal party, uninfluenced by national and state partisan considerations, had not been clearly grasped.

The questions may well be asked, why is it that the national parties, and the people as well, feel so strongly that the interests of political parties must be given consideration, even to the detriment of the local affairs of the cities? Can we devise any system of municipal government which will make the cities a less attractive field for exploitation for the political parties? In the first place, why does municipal government offer such attractions to the national political parties, and why are the people in the cities governed in their decisions of municipal questions by party considerations? The reasons are three in number: The first to be mentioned is to be found in the position assigned by the American law and practice to the city. The American city is, as has been pointed out, a most important agent of central government. Our American principles of local self-government, and our desire to avoid complexity in administrative machinery, have brought it about that most matters of even general interest are attended to by the local corporations. In the case of the county and the town, which have comparatively few interests

peculiar to themselves, the principle of decentralized administration works reasonably well. The legislature being controlled by the same general class of people who control the administration of the law, namely the rural population, the laws which are passed by the legislature reflect pretty clearly the desires of the people, and there is little chance of conflict between the wishes of the people of the state as a whole, and the wishes of the people in any particular non-urban locality. Centralization in legislation and decentralization in administration of that legislation do not result in conflict. In the case of the cities, also, the attempt has been made to apply the same ideas. Cities attend to the administration of a host of matters of general state concern like the preservation of the peace, the care of the poor, the management of the schools, the administration of excise legislation. In some cases the county and town have been consolidated in the city organization in order to avoid the necessity of keeping up two systems of administration. In the case of the cities, however, the original determination of the policy with regard to these matters of general interest is made by a population having little conception of urban needs and little patience with the desires of the urban population. Legislative local option is persistently denied to the cities. Where special regulation is necessary, that is obtained by special legislation passed by the central legislature.

The only way in which the city population as such can exercise any decisive influence over many subjects is through the election of municipal officers. This influence is, however, a potent one, for our decentralized administrative system predicates an almost complete absence of central control; the administration of the law by centrally uncontrolled municipal authorities. These authorities may administer the law with great discretion, with so much discretion, in fact, as entirely to alter its character as a rule of conduct to be observed by the citizen. So long as this is true, state parties which are formed for the purpose of advocating and adopting some general principle must have an enormous interest in making their influence felt in the choice of municipal officers. Thus take the matter about which there has been so much discussion recently in New York, *i.e.* the Sunday closing of liquor saloons. So long as that is a matter of local determination, — and it is under a system of centrally uncontrolled local administration of the excise law, — the state parties have a vital interest in municipal administration. No one who recalls the enthusiasm excited at the Republican state convention of 1895, by the resolution committing the party to Sunday closing throughout the state, can fail to admit that the Republican party believes it has an interest in bringing about Sunday closing in the cities. No one can blame it, therefore, for striving to make its influence felt

in the administration of the law providing for Sunday closing even if the administration of that law is entrusted to municipal authorities. So it is with all these matters of state concern. If left to uncontrolled municipal administration, they are sure to cause political parties to interfere in municipal government.

Further, a decentralized system of administration, in accordance with which cities or their officers are made agents of state government, often results in making the interference of the state parties necessary from something more than the mere theoretical interest which they may have in the adoption and application of the general principles on which they are founded. If the city or its officers are, for example, given the control and management of state and national elections, the state political parties cannot be blamed if they insist on having something to say with regard to the filling of the offices controlling elections. More than once state and even national questions have been influenced, if not decided, by the voters of the cities; and more than once it has been claimed that frauds by municipal officers in the vote on state or national questions have contributed to the result. Once, certainly, namely, in 1868, the suspicion of fraud was so great that Congress instituted an investigation of the matter, while for a long time after 1868 it was so thoroughly convinced that fraud had been generally committed by the local

authorities, that it provided a system of federal supervision of elections, though recently this system has been abolished. So long, therefore, as the result of our decentralized system of administration is the control by the municipality of matters of general interest, that is, the local administration of general laws, so long must we expect national and state political parties to take an interest in municipal government.

Is it possible now to remove the temptation for political parties to interfere in municipal government by having the state government take into its own hands the management of those matters which do not affect the city primarily, but are of interest to the state as a whole? Undoubtedly something may be done in this direction. Indeed, in the state of New York something of this sort has very recently been done. Thus the assumption by the state of the care of pauper lunatics and the relieving of the localities of all control over this branch of administration was a step in this direction. This step was due, not so much to any feeling for the cities, as to the belief that this subject of administrative activity was not generally being properly attended to by the localities. We have a more recent instance of the assumption by the state administration of duties formerly attended to by the cities and localities generally. This is seen in the much-talked-of Raines Excise Law, which is executed by a series of state agents,

controlled at Albany. Unquestionably further steps in the same direction might be taken, which would not only make the state political parties less anxious to interfere with the affairs of the cities and localities generally, but would also result in better administration. Thus the matter of prisons and jails is distinctly a part of central and not local administration. Further, in other cases, while it might be advisable to retain local management, such local management might be subjected to a more effectual central control. Education and sanitation are matters which should be managed upon a uniform plan. The preservation of the peace is also really a function of central rather than of local government; and while the localities might profitably be given certain powers regarding it, they should, in a properly organized system of administration, be subject to some central administrative control. But it is unquestionably true that there are many matters of general interest now attended to by cities in regard to which they always should have large powers. Such an one, for example, is the matter of elections. The world over, where elections are held, they are largely in the hands of the local bodies; for where party feeling is strong, if the election machinery is centralized, the party controlling the central organization can register its will much more easily than where the control of elections is left in the hands of the locality.

There may be election frauds under the system of local control of elections; but, taking the state as a whole, these are apt to counterbalance each other, and the total result for the state is more apt to be in accordance with the wishes of the electors than under a system of administrative centralization. One cannot read the debates of Congress at the time of the recent repeal of the Federal Election Law, without being convinced that this consideration had an important bearing on the final result of the deliberations. It is thus advisable, if not necessary, that the control of the election machinery should be in the hands of the localities.[1] Such, further, has been the solution of this problem in almost every municipal system. In England, France, and Germany city officers have very important functions to discharge relative to state elections, both in superintending the making of the voting lists and in watching over the casting of the votes, and in their canvassing. It would seem thus that we must of necessity reconcile ourselves to the conclusion that cities must, to a degree at any rate, remain as they are at present, the agents of the general state government. The

[1] If this is not the method provided, some method of special local elections for filling the position of local election officers, similar to the one provided in the New York system for the rural districts, must be adopted. But, as has been pointed out, one of the greatest evils of our present system of government is the superabundance of officers to be elected. This is particularly true of the localities.

consequent temptation to the interference of political parties in municipal affairs, while it may be somewhat diminished by reducing the sphere of state agency of cities, will always exist.

In the second place, the temptation of the political parties to interfere in municipal government has been increased by the existence of the spoils system. The distribution of the spoils of municipal office has been regarded as a legitimate means of strengthening the state and national political parties. The spoils of municipal office have indeed assumed greater importance than they formerly had, as a result of the fact that the opportunity for enjoying the spoils of national and in New York state office also, has, owing to the adoption of the Civil Service Acts and Rules, been much abridged. A conviction that the spoils system was responsible for many of the evils of municipal government led to the attempt made in many instances, previous to the beginning of the Civil Service Reform movement, to limit the number of offices at the disposition of the victorious political party. Thus, we often find in city charters provisions adopting a merit system of appointment for policemen and firemen. These provisions were, it is true, so crude as to be of little value, except as showing the conviction of the people, as represented in the legislature, that the spoils system was an evil. The quite common provisions giving the members of the fire and police departments a more perma-

nent tenure of office than was assured to the employees in other departments are greater evidence of the desire to break up the spoils system. In the New York charter of 1873 a similar permanent tenure was adopted for the regular clerks and heads of bureaus. The Civil Service Reform movement has aided in the extension of the idea, though, with the exception of the states of New York and Massachusetts and a few cities in other states, it cannot be said that the merit system of appointment has been generally adopted. A further extension of the system ought to have much influence, not only in bettering city government, but in decreasing the temptation of the national and state political parties to interfere in municipal government. It is, however, to be noticed that while the Civil Service Reform movement has had a most marked influence in improving the national administration, its adoption in the cities, particularly in the cities of the state of New York, has not had the success which was expected of it. Mr. James C. Carter calls attention to this fact in his excellent address as president of the National Municipal League, at a recent meeting of that body. He says the execution of the Federal Civil Service Rules "devolves on the President himself and the heads of Departments, always men of high personal character and who are deeply interested in making them effective in order to save themselves from intolerable vexation

and hostile criticism. No party can now take on itself the odium of a large profligate partisan use of federal patronage. It is otherwise in the matter of municipal patronage. No such public watchfulness and criticism are exercised." Does not the mere statement of these different conditions suggest the remedy? If the workings of municipal Civil Service Commissions are not subjected to public criticism because of their obscurity, can we not obtain the desired result by putting the administration of the Civil Service laws, as has been done in Massachusetts, by the Civil Service Law of 1884, in the hands of a State Civil Service Commission? It is easier to watch the doings of one body than those of a score or more. It is easier, also, to bring pressure to bear on one authority than on a score of authorities. If there is a constitutional objection to centralizing the administration of the Civil Service laws, as there might be under a constitutional provision assuring to the localities the right to elect, directly or indirectly, their own officers, the grant to the State Civil Service Commission of large powers of control and supervision over local commissions, while reserving to the local commissions the power to administer the law, would not be open to the same objection. This was, indeed, proposed by the Civil Service Bill drawn up by the New York Civil Service Reform Association, and laid before the legislature of New York during the session of 1896.

Mr. Carter seems to think that the plan of vesting the administration of the Civil Service laws in a State Commission "is contrary to just principles of municipal government, and affords little promise of success." It can, however, easily be shown that the administration of Civil Service laws applicable to municipalities by a state board is no more contrary to "just principles of municipal government" than is the determination of the qualifications of municipal officers by the state legislature. For, as has so frequently been pointed out, uncontrolled local administration of general legislation practically gives local authorities a veto power over such legislation. What the state has the right to enact into law, it ought to have the right to execute as law. If we therefore admit that Civil Service laws affecting cities, both those introducing appointment for merit, and those attempting to give municipal officers a tenure during good behavior, are proper, we must also admit that their administration by a state board is also proper. That the central administration of municipal Civil Service laws "affords little promise of success" is a statement which the success of Massachusetts, where Civil Service laws affecting cities are thus administered, goes far to disprove. It is indeed true, that in England the whole matter is left to the cities to regulate; but on the other hand, in Prussia the qualifications of many municipal officers, including some who hold positions of

great discretion, are determined by state legislation which is administered also by officers of the central government.[1]

It is believed that the attractions to interference by the political parties in city government may be somewhat diminished, both by a further centralization of state administration and by the abolition of the spoils system. Can the opportunities for such interference also be removed? It has been shown that one of the great opportunities for such interference is to be found in the relation of the cities to the state legislature, which, of necessity, must always be controlled by state and national political parties. Anything which will alter that relation so as to free the cities from the continual exercise of central legislative control through special legislation, ought to diminish greatly the opportunity of the national and state political parties to interfere in municipal politics. Particularly would the taking out of the hands of the legislature the regulation of the detailed administrative organization of municipalities have that result. For so long as the view is entertained that the spoils of municipal office may be legitimately used to strengthen the state parties, so long is the exercise by the legislature of the power to rearrange and change details in city organizations extremely dangerous, — dangerous because it is so frequently made use of for party ends. The exercise of this

[1] Leidig, *op. cit*, pp. 113, 115; Loening, *op. cit.*, p. 177.

power by the legislature is not only dangerous, it also makes impossible the consideration of the problem of municipal organization, from the point of view of scientific theory. If a commission appointed for the study of a municipal problem is constituted, as it not uncommonly is, not of persons who, by reason of education or practical experience, are fitted for the solution of the problem, but of those from whom the greatest partisan political benefits may be expected by the party in power in the legislature, what hope can we entertain that municipal problems will be solved? The people of the cities who, as municipal voters, do not care much about party politics, but do sincerely wish their cities might be well governed, often suspect the motives of such commissions: and, feeling as they do, take little or no interest in what is done by them, and by the legislature at their suggestion. Measures of the utmost local importance have been in the past frequently rushed through the legislature without attracting much attention in the localities whose interests are fundamentally affected by them. The influence of political parties through their power in the legislature over the details of municipal organization is undoubtedly responsible for many of the anomalies which we find in municipal charters. The student of municipal government, on seeing them, is compelled to ask himself, not what was the theory at the bottom of this or that provision, but what party was in control of

the legislature which adopted it, and what it hoped to gain by its adoption. So long as the legislature exercises habitually such powers over municipalities, so long must we expect that no consistent theory will be followed in the organization of our municipal government, but that it will be governed entirely by the exigencies of party politics.

In the second place, our present system of elections would seem to favor the interference of the political parties in municipal government. This is due particularly to the fact that the elective principle is so generally employed for the filling of offices, both state and municipal. Mr. S. R. Moffett[1] says, that "whenever a citizen of San Francisco goes to the polls, he is required to assist in filling from sixty to eighty different offices, and is obliged to select from among about 300 candidates." While the citizen of San Francisco is probably worse off, in this respect, than the citizen of many other cities, it is undoubtedly true that the usual demands made at the polls of even intelligent municipal voters are too great. No man can be expected in busy city life, with its lack of neighborhood feeling, personally to acquaint himself with the merits of the various candidates, but of necessity relies upon the state or national party which reflects most clearly his opinions, and votes the straight ticket of that party. If he scratches his ballot, he scratches only a party candidate,

[1] *Suggestions on Government*, p. 90.

about whom he has been able, without great expenditure of time and effort, to learn something.

It has been hoped also by separating local from state and national elections to give the voter a better opportunity to allow municipal considerations to control in the choice of municipal officers.[1] Several methods have been devised for such a separation. One is to provide that municipal elections shall take place at a different time of the year from the general elections. This has been done very generally in the case of the smaller cities, and such an arrangement is the common one in the rural districts. In the rural districts the plan has been reasonably successful. Competent officers are commonly elected, and are often kept in office during long terms, although it must be admitted that even the town elections are influenced considerably by political considerations, and are almost universally, especially in times of great political excitement, regarded as straws which indicate the way the political winds are blowing.[2] In the smaller cities having local spring elections, as in the towns, it is undoubtedly true that local ques-

[1] See the Address of Majority Delegates, already cited, p. 193.

[2] The success of universal suffrage and majority rule in the rural towns, notwithstanding the influence on local elections of state politics, would seem to show that neither system is inherently bad. The success of universal suffrage in rural local elections is undoubtedly due to the fact of the feeling of neighborhood and to the very general knowledge every one in the community has of all the candidates.

tions are not decided exclusively in accordance with political considerations. But in most of the larger cities where local spring elections have been provided, as, for example, they were once provided in New York city, they have been abandoned for the very reason that political considerations seemed under such a condition of things to have even a greater influence than under the system of general elections.[1] The reason for the failure of such a method of municipal spring elections to prevent the interference of national politics in municipal affairs is alleged to be the impossibility of getting out a large vote at that time of the year, particularly if the citizens are called upon to vote at a general election in the autumn. People, it is said, are too busy in a large city to give up the time to register and vote more than once a year. Another method of separate elections has been tried in Boston, and consists in the provision that the municipal election shall take place one month after the state election, use being made at the municipal election of the register for state elections. Such a method has the advantage of making two separate registrations of the voters unnecessary. But while in some instances the change of votes has been quite striking, it can hardly be said that this method has resulted in preventing political parties from having great in-

[1] See Bryce, *American Commonwealth*, last ed., Vol. I, p. 627, Note 2.

fluence in municipal elections.[1] The third method has been provided in the recent New York constitution, which has, roughly speaking, provided for municipal elections on odd numbered years, and for state elections on even numbered years. The most important exception to this rule is to be found in the case of the members of the Assembly, who are elected each year. This method of separate municipal elections has the advantage of not making as large a demand on the time of voters in the large cities as do both of the other methods described. It has, however, the disadvantage of not so clearly distinguishing municipal from state elections. How it will work can be determined only after further experience. That it will do some good is hoped. That it will cause interference in municipal elections by political parties entirely to cease cannot be expected.

It would seem that more is to be expected from diminishing the sphere of the city as an agent of the state government, from decreasing the spoils of municipal office to be enjoyed, and from diminishing the number of municipal officers to be elected. Much has been accomplished already, so far as the last point is concerned, in most of the large cities. That the step has not accomplished as much as might be hoped is due, undoubtedly, in large part to the fact that the spoils of municipal office offer to political parties almost

[1] See Matthews, *op. cit.*, p. 178.

as much temptation now as ever. But while some good is to be expected from all of these changes which have been proposed, we cannot really hope that the political parties will ever be driven out of the field. Even in England, where the city is less than almost anywhere else an agent of state government, and where, when an agent of state government, it is subjected to a strong central administrative control, where the spoils system has no appreciable influence, and where few officers are to be elected, there are no municipal parties to speak of. Mr. Chalmers[1] says: "In the great majority of boroughs the elections are governed by considerations of party politics. A municipal election is regarded as a means of feeling the political pulse of the inhabitants, and purely local considerations have but little influence on the results."[2] Dr. Shaw points out, however, while admitting that "in recent municipal elections . . . party issues have been introduced to a quite unprecedented extent . . . by the unwonted employment of the occasion for testing the strength on the Home Rule question,"[3] that the council, which consists of almost the only elected municipal officials in the system, is quite a permanent body, its members being re-elected term after term

[1] *Local Government*, p. 76.

[2] Such is also the case in at least one Prussian city. Leclerc, *La Vie Municipale en Prusse*, p. 27.

[3] *Municipal Government in Great Britain*, p. 47.

without even a contest. This is said to be particularly true of the smaller cities. One reason for the continuance of members of the council for so long a term in office may be found in the fact that the idea of rotation in office has never taken root in England. Another reason of this phenomenon, as well as of the fact that so many new candidates receive no opposition, is to be found in the fact that the English method of nomination does not make the primary meeting and the party machine, with all their acknowledged abuses, necessary, any qualified citizen being practically at liberty to offer himself as candidate subject to the obligation of paying his share of the expense of printing the ballots, while the system of election does not make even a poll necessary, the law permitting the returning officer to declare a candidate elected, provided no one runs against him. English aristocratic traditions make it much easier for the party, which has nowhere greater influence, to be governed from above without the intervention of the primary meeting, an apparently democratic institution, but in reality the tool of the party machine.

It would seem, therefore, to be useless to look forward to the time when the state and national political parties will cease to have an influence in deciding municipal issues. Indeed, many consider the present system not only necessary but of advantage, believing that in the cities, where the

distinctions of class are more clear cut than elsewhere, the cleavage of distinctively municipal parties would be along social and class rather than along political lines, as they have been in London, the only one of the English cities which has developed distinctively municipal parties.[1] But we may justly hope that a decrease of the functions of central government discharged by cities, or the subjection of the discharge of such functions to greater central administrative control, and the abandonment of the spoils system, will diminish the attractions of municipal government for the national and state political parties, while an increase in local autonomy, particularly so far as the power to arrange the details of municipal organization is concerned, and a reduction in the number of elective officers, will lessen the opportunities of political parties to exploit municipal government for their own purposes. Freed from many of their functions of central government, and able to decide municipal questions more in accordance with local considerations, our cities should be able, if properly organized, to attend to their own affairs much more intelligently and much more efficiently than they have been able to in the immediate past. In the following chapters the attempt will be made to ascertain the proper form of organization for the American city.

[1] See Matthews, *op. cit.*, p. 178.

CHAPTER IX

THE CITY COUNCIL

Finally, the position of the city has an important influence on the form of its organization. Being in theory an organ for the satisfaction of local needs, the city should have a body representative of its political population which should have the power to determine its local policy. Not only is this true from the point of view of theory, it is also the teaching of experience. One of the principles at the basis of municipal government in England, France, and Germany is that very large powers of determining municipal policy are vested in such a representative body, which is called the municipal or city council. However much the system of municipal government in these different countries may differ one from the other in other respects, in this point they are agreed. In England the city council has by law a more important position than in either France or Germany, discharging what in theory are administrative or executive as well as deliberative or legislative functions. In Germany and France it is confined to the discharge of legislative functions, while in

Germany, further, which is not the case in either France or England, the executive has a large power of suspensive veto over the deliberations of the council, to be overcome only by an appeal to the proper authority of the central administration. But in all three countries it is the council which is mainly to determine the policy of the city government. Further, it is to be remembered that the city council has not been destroyed in the United States, except in a few instances where, while it theoretically exists, it is little more than a name. It is true that everywhere in the United States it has lost considerably in power. As has been pointed out, it has been robbed of many functions which have enured to the advantage of the executive departments or the mayor, who has almost everywhere a limited veto over its resolutions. The legislature has also assumed the performance of many duties which the council formerly attended to. But that the city council is dead in the American municipal organization, or that it is even generally, at the present time, an unimportant authority in the United States, is a proposition which cannot be entertained for a moment. In so far as the plan of incorporating municipalities by general acts, and of preventing special legislation with regard to cities, has been adopted and observed, the powers of the city council necessarily tend to increase. Special action by the legislature relative to cities being impossible, large powers must be

granted by the legislature in its general acts to the municipal council. Take, for example, the General Municipal Corporations Act of Illinois, of date April 10, 1872. This provides that the council, which consists of the mayor and aldermen, shall control the corporate property and finances, appropriate money and levy taxes, not to exceed certain limits, for city expenses; may levy special assessments and borrow money not to exceed five per cent of the tax valuation, may construct public buildings, provide for wharves, parks, and cemeteries; has the control of the streets, but may not grant street railway franchises for longer than twenty years; may exercise large police and licensing powers; and has almost complete control over the municipal organization. The only limitation on its power of organizing the official force of the municipality is found in the sections of the general act providing that certain officers, namely the mayor, clerk, attorney, and treasurer, are to be elected by the people, and that the officers for whom the council may provide shall be appointed by the mayor and confirmed by the council. All appointed officers may be removed by the mayor, but the council may restore such persons to office by a two-thirds vote. The experience of Ohio, to which reference has already been made, is merely the exception that proves the rule. The state of Ohio was one of the first, if not the first state in the Union to provide a general municipal corpora-

tions act, but, as has been shown, the courts of the state have, in their interpretation of the constitutional provisions making such action on the part of the legislature necessary, had such a narrow conception of a special act, and have permitted the legislature to make such a minute classification of cities, that, as a matter of fact, the régime of Ohio is really one of special incorporation. The legislature has, as a result, passed much special legislation relative to cities, and where the cities of Ohio have councils, they are, in many cases, almost devoid of power. A good example of this fact is to be seen in the organization of the city of Cincinnati, where most of the work of the city is attended to by the mayor and various executive boards. Mr. Charles B. Wilby, in an article on the "Municipal Condition of Cincinnati,"[1] says, "The Board of Administration [which consists of four citizens appointed by the mayor], aside from the power vested in the Police Board, transacts five-sixths of the business of the city. Its authority covers that given to the Department of Works under the Cleveland charter, and includes many other powers, those of the Board of Control, Infirmary Directors, Health Department, including the appointment of the Health Officer, Water Works Trustees," etc. He says again: "The other Boards are the Board of Fire Commissioners, con-

[1] To be found on page 313 of the *Proceedings at the Conferences at Minneapolis and Cleveland for Good City Government.*

sisting of four members, the Board of Supervisors, which performs the duty of the Tax Commission, and Board of Revision and Equalization, consisting of six members. All of these minor boards are appointed by the mayor." [1] In the new charter of Cleveland, however, the council has been given a more important position, having the power to confirm the mayor's appointments.[2]

Not only thus is the council a most important organ of municipal government in the most important countries of Europe, and in many instances in this country, where it also appears to be growing in importance in so far as the idea of general municipal corporations acts and the prevention of special legislation has been adopted, but it is also true that the municipal reformers of the present time seem to be in many instances in favor of a partial, at any rate, rehabilitation of the city council.[3]

But whatever may be the condition of the cities

[1] Such, also, is the condition of the city of Columbus. See article of Mr. Williams, on the "Municipal Conditions of Columbus," *Ibid.* p. 323.

[2] See Blandin, "Municipal Government of Cleveland," *Ibid.* p. 114.

[3] See an able plea for the city council, by Mr. D. F. Simpson, in an article on the "Municipal Government of Minneapolis," *Ibid.* p. 93, where attention is called to the fact that the present government of Minneapolis, and of most of the cities in the world which have good government, gives to the council a most important position in the municipal government. See also, Devlin, *Municipal Reform in the United States*, p. 139.

of the world in this respect, the municipal council would seem to be absolutely necessary in every system of municipal government, and for two reasons: In the first place, as has been intimated, local municipal autonomy would seem to be impossible without it. There are many powers connected both with the determination of municipal policy and the carrying out continuously of that policy when once determined upon, which are of a legislative character, which, in other words, resemble powers that throughout our entire system of government are entrusted to a deliberative body. So long as we retain our present ideas of government, they will never be entrusted to administrative officers or boards composed of merely a few individuals who do not owe their election to the people, who, in other words, are not representative of the municipality. If the municipal council is destroyed, or what is practically the same thing, shorn of its powers, such powers will not be conferred upon administrative officers or boards, but will be exercised by the legislature of the state, which is generally regarded as more representative in character than these officers or boards ever can be. The destruction of the municipal council means, therefore, not the destruction of the council or representative idea of government, but merely the transfer of local legislative powers to a central legislative body. The more important the city council, the less important is, as a matter

of fact, the position of the legislature as the organ which is to determine the policy of the municipality. Therefore, if municipal home rule or local autonomy is of any importance, we must reconcile ourselves to the existence of the city council, and must set to work to organize it in the best possible manner.

In the second place, even if we conclude that municipal home rule is possible without a council, even if we regard the experience of both Europe and our own country as teaching us no lesson at all on this point, even if we are willing to base our municipal organization on principles different from those which obtain in all other parts of our government, — even if we concede all of these things, still is the city council necessary in a well-organized system of municipal government. For one of the principles which lie at the foundation of all government is that the function of determining the policy, which we may denominate politics, should be clearly distinguished from the function of executing or carrying out that policy which may be denominated administration. If these functions are not clearly distinguished, it is difficult, if not impossible, to prevent politics from affecting administration, not only in its actions, but also in its organization, with the result that qualifications for even clerical and technical positions in the public service soon become political in character. While it is necessary in all governmental organizations to

separate politics, that is the function of legislation, from the function of administration, it is particularly necessary in the case of municipal government, on account of the technical character of a large amount of municipal administration. Positions in many branches of municipal activity must be filled by men with large technical knowledge, if the work of the city is to be carried on advantageously. And our past experience, not only with regard to municipal administration, but also with regard to the national and state administration, proves beyond the peradventure of a doubt that if politics are allowed influence in the appointment to such technical positions, they are not filled by competent men. This is the essential vice of the present charters of New York and Brooklyn, the last of which is often adduced as an example of the highest development in American municipal organization and as solving the problem for this country.

In these cities the councils have been all but abolished, particularly in New York, and the mayor and executive officers exercise almost all municipal legislative and political powers not assumed by the legislature of the state. The heads of departments have ceased altogether to be permanent in tenure, and it is considered almost as a matter of political principle that each incoming mayor shall appoint new incumbents. Indeed, the charters of both cities in their present form

make a special point of permitting each mayor to secure heads of departments who will represent the principles on which he himself was elected and stands, although he is given no continuing power of removal. This may have been necessary in order to make such a system of municipal government popular in character. But popular municipal government has thus been secured at the expense of the highest administrative efficiency. What has actually been done by such an arrangement is to create a municipal council in a new form which does not, it is true, possess all of the powers of the original council, but which does actually determine what shall be the policy of the city, so far as that is a matter for local determination. The fault of such an arrangement is both that the elective principle has been abandoned in the very place where it is most needed, for "if you want representation" you must elect, and that officers who should be administrative have become political in character.

The attempt made in New York for quite a time prior to 1895, to make the heads of executive departments independent of the mayor, and to give them pretty long terms of office, is a proof of the desire to obtain a reasonably permanent official force, which should be independent of changes in policy as determined by the municipal elections; while the passage of the Power of Removal Bill of 1895, which gave the mayor the power within six

months after assuming office to remove all heads of departments, is quite as good a proof that it was considered improper that officials having as much to do in determining the policy of the city, as these officers have under the present New York charter, should not be representative of the people of the city. The great change in municipal policy brought about by the elections of 1894, forced the adoption of the Brooklyn principle, which certainly is the proper one where there is no council possessing large powers. For municipal government must in this country be popular, whatever else it may be. It may be efficient or not, as the case may be, but it must be popular and representative. The determination of questions of policy being placed, as it is under the New York and Brooklyn plan, in the hands of officers whose duties are mainly administrative, those officers ought, when they cease to represent the people of the city, to be removed from the control of the city affairs.

The probability of the introduction of politics into the administration of city affairs as a result of this confusion of legislative and administrative functions, is greater where the only way in which the people of the city may express their wishes with regard to questions of great local interest is through the administration of laws, general in form, passed by the state legislature. If there is no local option in such matters, by means either of direct local legislation or the election of a city

council which shall pass the necessary ordinances, the experience of this country would seem to show that under a decentralized administration, with great local self-government, the people will find a means of local option through their power to elect officials who will administer the law so as to adapt it to local conditions, thus making administrative offices political in character. The result of the destruction of the city council and the transfer of its powers to administrative officers or boards is then the intrusion of politics into administration, the very thing which it was hoped to avoid by the differentiation of the mayor and the executive departments from the original council.

Our journey in the pathway of municipal reform, begun about the beginning of the century, has led us to the point from which we started. Like persons lost in a fog, we have walked in a circle, not being able on account of the obscurity of our surroundings or the defectiveness of our vision clearly to see where we are going, or even, it must be admitted, generally understanding what point in our journey we have reached. The only respects in which our present position differs from that in which we were when we started this so-called reform movement, are that while originally we had practical home rule, we have now practically lost it. Certainly if the distinction of the function of deliberation from that of administration is of any value, the present form

of municipal government, as exemplified in the charters of New York and Brooklyn, cannot be regarded as proper. Certainly, if there is any advantage in municipal home rule, that form is merely temporary. By what has been said it is not meant to convey the impression that good and efficient government is not possible under such a form of organization. Good and efficient government is possible under almost any form of organization. More depends upon men than devices, but it is certainly true that it is as easy for bad men as for good men to control the city government under this system, and the experience of Brooklyn, which has tried the plan in its entirety longer than New York, seems to show that municipal government under this system has actually been oftener inefficient, if not absolutely corrupt, than wise and untainted by scandal.

If we then believe that a large measure of municipal home rule is necessary, that the government of the city should be popular in character, and that the functions of deliberation or determination of municipal policy and of administration or the execution and carrying out of that policy should be kept distinct, we cannot avoid the conclusion that a city council is a necessary part of the municipal organization. Care must be taken, however, both in determining the relations of the city to the central state government, and the position and powers of the council in the municipal organi-

zation. Enough has already been said to show that the necessary degree of home rule may be obtained by the grant of large local powers to cities, which should be incorporated by general act, and should be allowed to determine for themselves the details of their organization, but should be subject to a central administrative control, instead of the present legislative control by means of special legislation, where some central control over municipal affairs, or affairs attended to by the cities, is necessary.[1]

How shall we, however, determine the position and fix the powers of the city council? In the first place, it may be said that in a country where public officers feel a due sense of responsibility to the public, and where partisan politics has not extended its malignant influence over matters of administration, the matter may be left to the council itself. Such is the case in England, where almost all the details of municipal administration are left to the city council to arrange. The council is practically the only municipal authority officially known to the law. It may, if it sees fit,

[1] The act of Illinois, which has been cited, is probably the best one in these respects which has up to this time been passed in the United States. The methods adopted in Missouri, California, and Washington are also reasonably successful. Their peculiarity consists in conferring power on cities to provide their own charters, subject to certain general limitations. See article by Mr. Oberholtzer, on "Home Rule for American Cities," in *Annals of American Academy of Social and Political Science*, Vol. III, p. 736.

prostitute the municipal administration in the interest of party politics. It may, if it sees fit, not only determine the policy to be followed by the city, but also concern itself with details of municipal administration, making use of its large powers for purely selfish and partisan ends. There is no efficient method provided in the law to prevent such an abuse of its powers. It is, however, prevented from so doing, either by a high sense of official responsibility, or by the existence of an enlightened public opinion which would not suffer such a prostitution of its powers. Probably both causes are responsible for the excellent municipal government which Great Britain enjoys. It may be also that restricted suffrage has some influence in producing the result as well as the great degree of local autonomy and the subjection of municipal administration to a responsible central administrative control. That the English method is the ideal solution of the question is hardly susceptible of denial. The fact that every branch of municipal activity is administered under the control of the council, brings it about that the responsibility for municipal government is absolutely concentrated, and the chance of conflict between independent local authorities disappears. The power frequently to elect a new council gives the municipal citizens an opportunity to control the policy of the city, and the concentration of power in that elected council makes it certain that the energies

of municipal officers will be directed towards carrying out that policy in its details, and will not be dissipated in vain struggles for supremacy with each other.

But that such a system can be adopted in this country at the present time may well be doubted. It has, indeed, been tried in this country and found wanting. It was the original system with which we started, and which we have been almost universally obliged to abandon. The question naturally arises: Why have we been unsuccessful while the English have been so successful? Such a question is most difficult to answer. It may be that the reason is to be found in the democratic character of our society, and it may be also that it is to be found in our system of government, which at almost every point attempts to secure good government rather by provision of law, by a system of checks and balances, than by the expression of public opinion. The adoption of this system of checks and balances seemed at the time of its adoption to be unavoidable. The fear of tyranny led us at the time of the formation of our governmental system so to tie the hands of almost all our governmental authorities as to leave none of them except the courts with any very large powers. With the absence of much real power has come a lessening of the feeling of responsibility. In our constitutions we have tied the hands of our legislatures; in our municipal charters and muni-

cipal corporations acts we have tied the hands of our municipal authorities. The legislatures on the one hand, the municipal authorities on the other, find themselves so hampered in the exercise of the few powers we have left them, are so accustomed to see their decisions and resolutions declared void by the courts, that they have come to feel that they need not be governed in their deliberations by considerations of regard for justice and reasonableness, which are left almost entirely to the courts as a matter of judicial determination. When we add to this fact the evil influences of the spoils system, which crept so imperceptibly into our governmental polity, and has, owing to its long continuance, almost completely demoralized our public opinion, we find ourselves in a condition where no one can recognize that the sense of official responsibility to the public is high enough, or public opinion is enlightened enough or effective enough to permit us to regard them as sufficient checks upon the action of the city councils we are likely to select. We must rely in the immediate future upon the more formal checks on unwise or corrupt action on the part of the municipal councils which we form, to be found in constitutional provision and legislative statutes, and we must trust to the courts, which up to the present time, probably owing to their greater powers and consequent greater sense of responsibility, have preserved themselves comparatively free from deteriorating

influences, to see to it that these checks are effective. In other words, the position of the municipal council must be determined very carefully in the law, which must prevent it from so making use of its powers as to introduce politics into the administration of municipal affairs. We must confine it to the determination of the general municipal policy. We must seek to cast our city council in the continental rather than the English mould.

By the law of 1884 the French city council is carefully prevented from exercising any administrative or executive functions, which are entrusted to the mayor and his deputies or adjuncts. Indeed, the detailed organization of the city, which is for the most part a matter of local determination, is in the hands of the mayor, the council exercising powers over it only indirectly through the power of appropriation. As Dr. Shaw well says: "The mayor is the controlling spirit and the total executive administration."[1] He has the fullest powers of appointment and removal, the making of contracts, the care of public works and city property, and the financial administration, and supervises its accounts and its public institutions,[2] observing, of course, in all of his actions the resolutions of the council, which determine the general policy to be pursued. But in France the council elects from its members

[1] *Municipal Government in Continental Europe*, p. 316.

[2] See for more detailed description of his powers, Goodnow, *Comparative Administrative Law*, Vol. I, p. 289.

the mayor and his deputies, among whom the mayor distributes the different executive departments. As there is for each of these departments a standing committee of the council, whose chairman is the deputy assigned to the management of the particular department, the whole work of municipal government is very largely under the control of the council, which Dr. Shaw thinks without any changes in the law "will be able to make the mayor practically their obedient servant in the performance of his executive functions." "The mayor . . . will doubtless long continue to be entrusted with the general oversight and control of the executive work of the commune, but I am not disposed to believe," he adds, "that he will always hold so dominant a place as the law of 1884 seems to contemplate." Such being the case, the position of the American city council cannot be exactly the same as the French, unless political conditions in this country change considerably. The French plan will probably have to be modified by the adoption of some of the principles underlying the German municipal organization.

It will be remembered that in what was said of the system of central control over cities in Prussia, attention was called to the fact of the independence of the executive, once appointed over against the city council, over whose resolutions it even has a veto power. Some such plan as this will have to be adopted in this country. Indeed, some such

plan as this has already been adopted in this country. It is to be found in the General Municipal Corporations Act of Illinois, to which reference has already been made, as worthy of imitation in other respects. By this act it is provided that all officers to be appointed shall be appointed by the mayor and confirmed by the council. The law is defective, however, in making provision for the confirmation of the council. This principle has been abandoned in most of the later city charters of the United States, as a result of the conviction that the responsibility for appointment was under it too diffused. But apart from this principle, the Illinois act is correct. It provides for the organization of the city by local action. The power to determine the organization may be left with the council, provided that the power of appointing to the positions in the organization, once established, be left with the mayor. The temptation of the council to remodel the city organization in the interest of party politics will be removed if the council has no influence on the power of appointment. It may be said that the power of organization is too important to be left in the hands of a body which like the council has done so much in the past to forfeit confidence in its integrity. Our experience of the use of the power by the legislature, however, can certainly not lead us to believe that the council would abuse it any more than the legislature has abused it in the past. Its possession by

the legislature, further, is more apt to lead to the intrusion of party politics into municipal administration. Indeed, in the past it has been frequently exercised by the legislature in the interest of the state and national political parties. Were it in the hands of the council, the temptation would be less, provided they had no power of appointment, because state and national politics do not in the nature of things and necessarily have so intimate a connection with a city council as with a state legislature. Further, the city council has, in the nature of things, more knowledge of local needs than a state legislature can ever have.

The giving the mayor the power to organize the detailed administration of the city finally has much in its favor. It is true that it would result in an enormous increase of his powers, but this would only be in accord with the movement seen everywhere in our government to increase the powers of the executive in the hope of securing better government, owing to the concentration of responsibility produced thereby. The grant to the mayor of such large powers would not further be a violation of the representative principle if the mayor should be elected; nor would it violate the fundamental principle of our public law that taxes shall be voted and governmental appropriations made by a deliberative or legislative body, since the council would have the power to veto any act of the mayor organizing new departments, by refus-

ing the necessary appropriations. This is practically the French system. It is also the system adopted generally in England, France, and Germany for the organization of the executive departments of the central government. It is to be preferred for the reason that the executive, in the case of cities the mayor, is in a better position to know the needs of the administration than the legislative body, and is responsible for the actions of his administration.

Such, in general, is the position which the city council should occupy. How now should it be formed? We can all agree on the general principle of election. The council should further be elected in this country by universal suffrage. But what shall be the method of organizing the voters? The district plan has so often resulted in the election of incompetent, if not corrupt council members, that there is quite a general conviction that it cannot be made the only basis of municipal elections. In large cities, however, local needs, which differ in even the most homogeneous municipal populations, will make it necessary to give localities as such some recognition. In smaller cities the need of locality representation is not so great, if it exists at all. In small cities the general ticket may be adopted, as it is in the councils of the smaller European cities. In the larger cities there must be a combination of both. If the locality system is to be

adopted, how shall the election districts be formed? If this is left in the hands of the council, our past experience proves that there is danger of the gerrymander. Perhaps the experience of foreign cities will be of advantage here. In England the districts are made by the council by a two-thirds vote, subject to the approval of the central government at London, and the number of councillors to be elected in each district cannot be less than three. In France, where no section in a city of over 10,000 inhabitants can elect less than four members, the districts are made by the General Council of the Department, a board similar to the Board of Supervisors in New York, on the initiation of a general councillor, or on that either of a member of the city council, or of the prefect of the department as agent of the central government or on the petition of the electors of the city concerned. In France the districts are made only after an investigation has been made of the matter.[1] In Prussia the matter is largely left to the city to determine. In the first place, the legislative body of the city, the municipal assembly, is to determine whether the district plan shall be adopted, the general ticket being otherwise the rule. If it determines to adopt it, the city executive is to attend to the apportionment, fixing not only the limits of the districts, but also the number of members to be elected from each district. The

[1] See Bœuf, *Droit Administratif*, p. 238.

executive must, however, observe the rule, that all voters are to be as far as possible equally represented.[1] If it is remembered that the town executive in Prussia is largely under central administrative control, it will be noticed that in all three countries the formation of the districts, while largely in the hands of the local authority, is subject to central administrative control. Further, it is to be noted that in both France and England the districts are not to be so small as to be represented by only one member, the belief being entertained that large districts are more apt than small ones to result in the election of competent council members.

If the general ticket is adopted, some provision for minority representation should be made. For if a majority of voters elect all the members of the council, a large minority of voters will be absolutely unrepresented on that body. If a plurality of voters elects all members, the representatives of a minority of the whole number of voters will be in absolute possession of the council. It has been shown that the form known as limited voting tried in New York and Boston has either been abandoned, or is regarded as unsuccessful. The system of cumulative voting, in accordance with which the voters have as many votes as there are offices to be filled and may combine their votes as they see fit, has, as recently applied to

[1] See Leidig, *Das Preussische Stadtrecht*, p. 78.

legislative districts sending each three members, been reasonably successful in Illinois. Proportional representation has been proposed and ardently advocated on the ground of its absolute proportionality and therefore its strict justice. But it must be remembered that mathematical proportionality, notwithstanding its justice, is really not the *desideratum*. What is needed more than anything else is a system of representation which will produce a body from which wise action may be hoped. Such a system must be based on the expectation that the voters will array themselves in a few, preferably two, large parties and that both of such parties shall be represented on the city council. Such a result is aided very largely by the existence of districts each of which will send one or more members to the council. It is not insured, however, by the district system, as for example, see the elections in New York in 1892, when 166,000 voters elected all the members of the council notwithstanding a minority vote of nearly 100,000. A district system thus, while it insures locality representation, does not insure the representation of minorities. If combined with some system of district representation where there are several members to be elected in each district, the form of voting known as preferential voting, heretofore described,[1] will, if adopted, secure both representation of the locality, which is necessary

[1] *Supra*, p. 156.

in a large city, and the presence of a minority party in the council, while it will not encourage voters to array themselves in numberless factions as would seem to be the tendency of mathematically proportional representation.

More, however, is to be hoped from the application of correct ideas as to the position and powers actually to be exercised by the council, than from any device for its formation. The experience of European cities — even the large ones — shows that excellent government may be obtained from city councils elected on either the general ticket or district plan, without any provision for minority representation. It may be said that limited suffrage has much to do with the result; but it is to be remembered that in the French municipality suffrage is universal, a longer residence, namely six months, in the city being the only limitation upon the principle which is not to be found in this country. In all the European cities, the council, however, confines itself to purely legislative work. At least it does not as a matter of practice confound its political functions with its administrative functions, where by the strict letter of the law, as in England, it has the latter. Politics do not thus creep into administration. If this result can be obtained, either by public opinion or the provisions of positive law, it is believed that the result will be the same.

Shall the council which is established consist of a single chamber, or shall it be given the

bicameral form? Originally, the Anglo-American council consisted of a single chamber. It is true, in this single chamber there were to be found two classes of council members, each of which discharged somewhat different functions, namely, the aldermen and assistants or councillors, but when attending to purely city affairs they acted as one body. Such is the form of the present city council in England. The French city council consists of one chamber also. The German form of municipal council, however, where the board form of the executive has been adopted, has some of the characteristics of the bicameral council, inasmuch as the executive has the right to veto the resolutions of the legislative body proper. It will be noticed that there is to be found in the original Anglo-American city council the germ of the bicameral form in the distinction between the two classes of council members. Under favorable influences at work in this country, almost all of whose legislative assemblies were bicameral in form, this germ has borne fruit, so that at the present time it is not uncommon to find the American city council consisting of two chambers. The latest opinion is, however, opposed to the bicameral idea, and return to the original English form of one chamber is strongly advocated.[1] It is not unfrequently

[1] Matthews, *City Government of Boston*, p. 13; Simpson, "Municipal Government in Minneapolis," *Conferences for Good City Government at Minneapolis*, etc., p. 95.

the case, however, that where the one-chamber system is adopted, this chamber contains two classes of members, some of whom are elected by general ticket and some of whom are elected on a district ticket. This would seem to be the best form. It at the same time makes provision for concentrated responsibility and greater efficiency, insures locality representation, and makes it probable that some of the members of the council will be men who are known beyond the limits of their municipal districts.

It is, however, open to the objection, that the members elected by general ticket, who would not in the nature of things constitute a majority of the council, may be outvoted by the members elected on the district plan. If those elected by general ticket form a separate chamber, their influence would, of course, be as potent as would that of the chamber whose members were elected by districts. But if these districts are not so small as to elect only one member each, the character of the district members may be expected to be such, that some of them at any rate will unite with the members elected by general ticket. If at the same time the members elected by general ticket have a term of office longer than that of the district members, their greater experience in city government would give them a moral strength which would go far to counterbalance the greater numerical strength of the district members. If

a single chamber organized in this way were formed, it would avoid unnecessarily complicating the municipal organization, and make efficiency and quickness of action easier of attainment than it ever could be under the bicameral system.

Should the council members be paid? The answer to this question will depend on the position assigned to the council. If it is confined, either as a result of public opinion or of the provisions of positive law, to the discharge of mere deliberative functions, salaries or compensation would not seem necessary. The sessions could be fixed at such a time that they need not interfere seriously with the daily avocations of the members. Further, it may be seriously questioned if the payment of salaries or compensation will result in any advantage. If the compensation is large enough to permit those receiving it to live without resorting to other means of livelihood, the council immediately becomes more or less professional in character, and just the sort of men are attracted to it who are the least desirable. For the council should reflect the wishes of the electors, and this it can never do unless its members are chosen from the people as a body, and not from the ranks of professional office-holders and politicians. If, on the other hand, the salary is not large enough to permit the members to live from its proceeds, there is no particular reason for paying any salary at all. Indeed, there is a positive disadvantage in paying

it. For the experience of all successful municipal governments is that the honor of membership of a municipal council is sufficient to attract the right class of men. If a small compensation is paid, the honor is by so much diminished, as the motives for seeking the office will not generally be regarded as unmixed. Closely connected with the question of compensation is the question of compulsory service. Compulsory service was characteristic of the original Anglo-American municipal system, but is gradually being abandoned. It is interesting to note that in Prussia, where municipal government is very successful, compulsory service was introduced into the cities in 1808, and is believed to have had such good results that it has been extended by the recent reform legislation to most local offices.

Finally, should the council be somewhat permanent in its tenure, that is, should only a portion of its members be elected, or should it be renewed *in toto* at each municipal election? Foreign experience is not absolutely conclusive on this point. In England and Germany the council is only partially renewed at each election. In France all of the council retire at the same time; that is, unless the members are re-elected. It is true that the success of English and German municipal government is rather more marked than is that of the French. This may, however, be due to the greater local spirit, which has had a larger oppor-

tunity for development, owing to the greater length of time during which the cities have enjoyed local self-government. But it would seem as if the chances in favor of good municipal government are greater under a system of partial renewal. One great need of municipal government is continuity. This can be obtained only by partial renewal, unless very long terms of office are provided, or unless the habit of re-electing competent council members has been acquired. Long terms of office without frequent partial renewal of the council membership are, however, incompatible with the necessary popular control over the municipal government. On the other hand, short terms, with the power of changing the entire membership of the council at each election, are incompatible with the attainment of that continuity of municipal policy which is so necessary. The proper method would seem to be to provide a term for the individual members of either four or six years, and to provide that every second year either one-half or one-third of the members should be re-elected. This is the English and German plan, the English municipal councillors being elected for three years, one-third retiring every year; the aldermen, one-third in number of the council, being elected for six years, one-half retiring every third year. In Prussia the members of the council are elected for six years, one-third retiring every two years. In France, however, the

term is four years, and all retire at the same time. In this country there is no general rule adopted. Here, as in so many other parts of our municipal system, we have no accepted theory.

However details may differ in the European systems, this point is to be noticed, that the terms of all council members are quite long. Further, the practice of re-electing competent council members, which is almost universal, and which in England at any rate is due in part to the system of nomination and election,[1] of itself produces continuity in municipal administrative policy whatever may be the law. Continuity in municipal administration is more necessary, perhaps, than in any other part of the government. So much work is being devolved upon the modern city that without it nothing can be undertaken and pursued to a successful conclusion. In this respect it is that a municipal corporation resembles a business corporation. Changes in party feeling affect it less than in the case of the state or national government, or, at any rate, should affect it less in a well-organized system of municipal government. Provision for the partial renewal of the council every one or two years is all the provision that is necessary for voicing the wishes of the municipal population.

But whatever may be our conclusion on this point, the important thing in municipal organiza-

[1] For the details, see *supra*, p. 213.

tion is the determination of the position of the municipal council. Short terms may answer the purpose if the habit of re-election is acquired by the voters. Whether a term be legally long or short, makes very little difference in the success of municipal government, if the council, in whose formation and actions politics in the right sense of the word, not necessarily national or state politics, but municipal politics, must, of necessity, play an important rôle, does not interfere in the daily routine of administration. If it does so interfere, administrative inefficiency will inevitably follow. Let the council be confined to questions of policy, and let the administration of that policy be entrusted to a permanent force of officials, actuated by technical and more or less professional motives, and the problem of municipal government is far on the way towards its solution. Whatever may be the law on the subject, that is the actual condition everywhere, both in England and Continental Europe, where municipal government is successful.[1]

[1] Shaw, *Municipal Government in Great Britain*, p. 64; *Municipal Government in Continental Europe*, pp. 27, 317.

CHAPTER X

THE CITY EXECUTIVE

In the preceding chapter the attempt has been made to show that the existence of a municipal council is necessary, both in order to provide for local self-government and to keep politics out of the city administration. It has also been shown that if the latter end is to be attained, the council must be confined or confine itself to the discharge of legislative functions, and that the administration of the municipal policy determined upon by the council must be entrusted very largely to the mayor, who, as well as the council, should be elected by the people of the city. Finally, it has been shown that the heads of the city departments should be appointed by the mayor if it is to be expected that technical skill and ability in these positions will be secured. But the best administration cannot be secured unless the further step is taken of assuring to such heads of departments permanence of official tenure. Up to the present time the average American municipal charter has not laid any stress upon such permanence of tenure. Nor do any of the most recent municipal

charters evince any desire to secure it, by the way in which the various executive departments have been organized. Indeed, it would seem that the newer municipal charters, with the end in view of securing popular government, attempt to prevent the appointment of permanent heads of departments. Certainly the requirement so commonly found in them, that the heads of departments are to be appointed by each incoming mayor, practically makes it impossible for any such permanence of tenure to develop.

The reasons for this failure to secure permanence in official tenure are two: In the first place, the people of the United States have never looked with favor on permanence of tenure for officers who have to exercise great discretion; and consequently nothing in the shape of an educated official service has been able to develop. The theory of legislative centralization so characteristic of the English system of government has had, as its corollary, that a great deal of discretion in the administration of the mandates of the central legislature is to be allowed to the officers who are to enforce such mandates, and that these officers are to be subjected to a continuous local popular control. The large administrative discretion necessary in such a system of government is made possible by the complete administrative decentralization by which this legislative centralization has always been accompanied. The execution of the law is thus

almost as political in character as its making. The principle of "rotation in office" has been the result, since through it the localities obtained the opportunity which under a system of legislative centralization they would otherwise have been denied, of adapting the general law to varying local conditions. The principle of rotation in office has always been the scientific foundation, so far as there has been any, of the spoils system. Such a method of obtaining local government has undoubtedly worked reasonably well in simple administrative conditions where technical skill and experience were not needed. But just so soon as these qualities are required, as they are in all cases where administrative conditions are at all complex, the system of rotation in office is productive of evil results if applied to any positions which are not really positions of the greatest discretion. These evil results are particularly marked in the complex administrative systems of our municipalities and our national government, wherever the principle of rotation in office has been adopted. Vigorous and indeed partially successful efforts have been made to abandon the principle of rotation in office, but up to the present time those efforts have been directed almost entirely towards the lower branches of the service, branches with almost altogether clerical and ministerial functions. Nowhere has the Civil Service Reform movement had, either as its avowed purpose or its actual re-

sult, the formation of a permanent service whose functions were at all discretionary in character. The main efforts of the Civil Service Reform movement have been, however, directed towards the reform of the national and central state services, although in a few instances the attempt has been made to reach the municipal service. But where the municipal service has been the object of attack, the same principles have been advocated as in the case of the national service.

How far now does the municipal resemble the national service? Is it organized on the same principles? An examination of municipal conditions will show that it is not, so far as the city is not an agent of the central state government. While too much stress is often laid on the business side of municipal activity, and too little on its governmental side, it is none the less true that while in the case of the national and central state government, the governmental or sovereign side of its activity is the predominant one, in the case of the municipality it is the technical non-political work which gives the tone to its government. In the national government, further, it is generally the case that what technical work is done is attended to by a personnel which has considerable permanence of tenure, although the political work is superintended by officers who change with each administration. We have, however, in this respect, as in so many others, transferred to city government

the ideas which have been obtained from a consideration of the national government. We have likened the heads of city executive departments to the heads of the national executive departments, have given them in our latest municipal charters a position similar to the heads of the national executive departments. Indeed, the system of municipal government to be found in the latest important municipal charters, as, for example, that of Cleveland, is spoken of as the "Federal System." But inasmuch as the position of the city, apart from its character as an agent of the central state government, is quite different from that of the national government, any system of municipal government which is based on the principles obtaining in our national government is seen to be based on a totally false analogy. Permanence of tenure is not demanded of the heads of the national executive departments, for the reason that their functions are mainly political in character. Permanence of tenure is not demanded of city executive departments in the "federal system" of municipal government, although many of them have no political functions at all to discharge, while others who may have a few political functions find their main work in superintending the technical and professional work which in the national system of administration is in the hands of a comparatively permanent force. It is, of course, true that at present not all such technical

work attended to by the national government is in the hands of permanent officials. This is due to the intrusion of the spoils system, which has not even yet been totally abandoned. But does it follow because the analogy on which the "federal system" of municipal government is based is a false one, that the principles which are supposedly applicable to the national government are not applicable to municipal government, and do not have advantageous results when there applied? It must be admitted they are from the purely theoretical point of view quite inapplicable. Any system of organizing the city executive is disadvantageous whose necessary result must be to prevent permanence of tenure for officers who are to direct the administration of technical and complex undertakings. The only excuse for the deliberate adoption of such a system is the fact that these officers are not engaged alone in the discharge of technical duties, but have at the same time most important political duties to perform. If they have such political duties to perform as they have in most American cities, in accordance with the mistaken American system of municipal organization, it is absolutely necessary that they change with each mayor, or, at any rate, that each new mayor be given the opportunity to cause such a change.

Permanent heads of departments were provided in the scheme of municipal government which took

from the city council its political functions. This plan, which was adopted in the middle of this century, has been denominated the "board system," although the name does not give an exact idea of its purpose. By this plan of municipal government boards were formed for the administration of the various branches of municipal activity. They were so constituted that generally the terms of the various members of which they were composed did not expire simultaneously, and thus it was impossible for each mayor to form entirely new boards. The main reason for the adoption of this system was not so much that the functions discharged were deliberative in character, and therefore required the formation of deliberative bodies, that is, boards, for their attention, but because continuity of administrative policy was needed. But it is also true that where the council had lost its political functions, that is, the power to determine the municipal policy, these boards had to discharge not merely administrative, but also political functions. They had not merely to determine the municipal policy, so far as that was a matter of local determination. They had also state political functions to discharge, either as a result of the direct grant to them of such functions by the legislature, or as the result of the fact that they had in their hands the uncontrolled execution within the municipal district of laws general in character and of vital interest to the state at large.

The struggle between the desire for popular control of municipal government on the one hand, and the desire for permanent administration on the other, is perhaps more marked in the administrative history of Brooklyn and New York than elsewhere. Brooklyn was one of the first cities to insist upon a popular control over municipal administration, and obtained it in the present charter, which not merely makes almost all of the heads of departments appointees of the mayor, but also insists on the principle that each mayor shall at the beginning of his term have the power to appoint the heads of almost all of the departments. New York, on the other hand, whose government was more complex, for quite a time after Brooklyn had obtained her new charter, laid stress on the idea of permanence in administration; and provided she secured that, was content to live under a system of government which was not so popular in character. Several years after Brooklyn had adopted her system of popular government, New York was forced, however, to succumb to the demand for a similar system. It is true that this demand was preceded by a revolution at the polls unexampled perhaps in her history, caused by the fact that the party which had, in the few years immediately preceding 1894, gradually got control of all departments of the city government, had been shown to be woefully unworthy of confidence. The necessity of a permanent administra-

tive policy had been so fully recognized, that it is doubtful whether the demand for popular government would have been strong enough to secure the result, had it not been for the extraordinary condition of affairs existing at that time. And it yet remains to be seen whether in the long run the new plan will be as successful as the old in the peculiar conditions of New York metropolitan affairs. Popular government will, it is true, have been made possible, but permanent administration will have been made much more difficult of attainment.

Not only is permanence of administrative policy made difficult under the "federal system," but also in our present conditions, general politics have a greater effect on the lower branches of the administrative service, as a direct result of the frequent changes in the heads of departments which the "federal system" would seem to necessitate. The great advantage of the "federal system," however, is the more clearly cut responsibility of all officers under it, and their greater amenability to the popular will. If some means might be devised to insure that the people would be governed in municipal elections more than they are at present by municipal considerations, such a system might be found to work reasonably successfully. If, however, the election of every mayor is to be determined exclusively or mainly by considerations of national or state politics, it is ques-

tionable whether the "federal system" with its frequent changes, not only in the mayor's office, but also in the various executive departments of the city, notwithstanding the greater powers given to the people under it, will result permanently so advantageously to the city as the board system, which, with all its faults, made possible a permanent administrative policy for the city, and thus tended to diminish the influence of state and national politics on municipal affairs.

The second reason for the adoption in municipal government of the "Federal" idea is intimately connected with the first, and is to be found in the fact that the former powers of the council had been so generally taken from it. The refusal of the council to confine itself to political and legislative matters, and its interference in administrative matters had led to the introduction of politics into the administration. The disgust of the people at seeing their municipal government so completely dominated by state and national politics, caused them to all but destroy the council on which they laid the blame. Had they, instead, insisted upon a more nearly complete distinction than has yet been made between legislation and administration, it is believed that greater benefit would have resulted. As has been pointed out, the destruction of the council has, in those cases in which it has been accomplished, had the result of again confusing political or legislative and administrative

functions. Formerly it was the council which discharged both such functions; now it is the heads of the city departments. The present system may have the advantage over the former in that the responsibility for maladministration is more clearly defined. Further, the fact that fewer officers are elected, that where the mayor appoints the other important municipal officers, he is the only elected municipal officer, makes it easier for the municipal citizen to cast his vote intelligently. It may also be necessary that we go through this period of absolute monarchy, so to speak, before we can reach really popular municipal government. But that it is a permanent form of municipal government may well be doubted. Under it we obtain neither local autonomy nor permanent, and therefore efficient, administration. The ideal municipal system is based on both of these principles. Not merely the ideal system, from the point of view of theoretical speculation, but the ideal system now existing. Such a system, either as a result of positive law, or of the habits of the people, makes provision for a body, elected by popular vote, and easily controlled by the local popular will, which determines the policy of the city, and for a permanent administrative force, permanent not merely in the lower ranks, but permanent as well, so far as the directing heads are concerned, which carries out the policy determined by the popular body. No sys-

tem of municipal government which does not, as a matter of fact, however the desired result may be accomplished, do this, can be regarded as successful. Such a result cannot, in the nature of things, be obtained under the prevailing system of municipal government in the United States. On account of this fact the "federal system," which, it must be confessed, has, until very recently, had a continually increasing number of admirers, must be condemned. As has been said, it may be necessary, as absolute monarchy with all its abuses was once necessary. But like absolute monarchy, it is necessary only as a stage in our development, through which we must pass on our way towards the ideal.

Conceding, then, that the heads of the city departments should be permanent in tenure, how shall they be formed? Shall they be single heads, or boards? This question has usually been discussed simply from the point of view of the character of the functions discharged, and the responsibility for the correct discharge of those functions. The "board system" seems to have been introduced at about the time that the council began to lose its powers. The fact that the powers which the council lost were mainly deliberative in character made it practically necessary to organize the authorities to which these powers were to be entrusted, in such a way that deliberation in action on their part might be assured.

This made the establishment of boards seem necessary, or at any rate advisable. In many cases also the fact that the branches of administration for which these departments, independent of the council, were constituted interested the state as a whole, like the Police, Public Health, and the School Administrations, also made it necessary to adopt the board form. For, as has been pointed out, the general administrative system of the state was very decentralized, and the people of the locality represented in the boards had, under such a system, really very large powers of adapting the general laws to local conditions. These boards had practically *quasi* legislative powers. Another consideration that made the formation of boards necessary was the fact that partisan politics had for various reasons crept into the administration. As the two largest parties were comparatively equal in strength, and as these executive departments, as has been pointed out, had great influence on the administration of general laws, it seemed advisable to attempt to provide for a recognition of both political parties, on the heads of these departments. This could be accomplished only by the adoption of the board form of organization. The fact, however, that responsibility for administration under the board form is diffused, has of recent years tended to discredit it, and the more recent charters show a decided tendency to abandon it

and resort to single-headed departments. But while a proper arrangement of municipal organization might succeed in making boards unnecessary, from the point of view of the character of the functions of executive departments, since by it legislative functions could be given to the council, and executive functions to the mayor and the departments; and while undoubtedly the single-headed system insures greater responsibility, the fact still remains that there are several reasons of great weight why the board form should be adopted. These are, in the first place, the greater permanence of tenure in the heads of the city executive departments, which is assured by the board form. This matter has been already sufficiently discussed. The second reason for the adoption of the board form is to be found in the fact that it is the only form of organizing the executive departments of the city which really makes permanently possible a popular, non-professional administration. It does not, of course, insure such administration; it merely makes it possible, which cannot be said of the single-headed system. The single-headed system of organization does, it is true, make possible more efficient administration, though it does not insure it. It makes it possible, however, only by making impossible a popular, non-professional, permanent administration. These statements need, perhaps, further explanation. The work in practically all

executive departments of cities of any size is so great in extent and so complex in character that it can be properly attended to by one man, only on the condition that he devote his entire time to it during his term of office. Certainly no one man can properly attend to the work of a municipal department unless he subordinates all other work of a private character to the performance of his official duties. Now, no man can afford to devote himself for any length of time to the performance of official duties so absorbing, unless endowed with large private means from which he can live without resort to some regular occupation as a means of livelihood, or unless the emoluments of office are quite large, and the experience derived from the performance of official duties is going to be of aid to him in his future career. The result is either that a permanent official class must be developed under the single-headed system, or else the offices are monopolized by the well-to-do classes of people. The latter result is hardly consistent with a popular democratic government; the former means either a permanent professional bureaucracy, or that the offices are filled by a set of men who make politics their profession, obtaining their livelihood from the emoluments of the various offices which they fill, one after the other, and which, because they do not occupy them for any length of time, and because they have not received any adequate train-

ing, — if they have received any training at all, — they are really not competent to fill. This last result is what has followed, in the average American city, — the adoption of the single-headed form of organizing the executive departments. It is unquestionably true that the majority of important offices in the city of to-day in the United States are filled in the long run by what are commonly termed "political hacks"; that is, men who get their living out of politics, who, if they do not resort to other and illegitimate methods of obtaining money, and are not well-to-do, must get their living out of the salaries which are attached, and must be attached, to the offices. They are, in fact, the only men to whom we can look under the present system to take office permanently. The present mayor of the city of New York has more than once publicly called attention to the fact that he was unable to persuade the business and professional men of the city to take office. Nor can we blame the business and professional classes of the community for the attitude they assume. Few men can afford to leave their regular occupations for four, or even two, years, and devote the greater part of their time and energy during even the shorter period to the performance of official duties. That once in a while such a man does do so, and, as is often the case, meets with extraordinary success, as did the late Commissioner of Public Works of Brooklyn, is rather an evidence

of exceptional public spirit and a keen sense of duty than evidence of the excellence of the general system, which ordinarily produces quite the contrary results.

Such are then almost inevitably the results, under our present political conditions, of the single-headed system of municipal executive departments. It would be possible by attaching large salaries to the important offices in the large cities, and by making the terms of the office much longer, preferably during good behavior, to develop a really professional service. If single-headed departments are to be retained, — and that the system has much in its favor, cannot be denied, — that is what should be done. If it were done, it would be possible to demand of the incumbents the previous training necessary to fit them for the arduous and complex duties they are to perform. We should then frankly recognize what is actually at the present time the case, that these positions, *i.e.* the heads of single-headed departments, must be held by a professional official class, and by so doing we would do much to elevate the plane of that class, both as regards character and ability. By the more general introduction of properly organized civil service reform methods in the lower ranks of the service, it ought to be possible to prevent these professional heads of departments from building up political machines. Politics would thereby be kept out of administration, and admin-

istration itself raised from the rank of a trade to that of a profession.

Such a permanent professional administration, however, would not reflect as clearly as is desirable the wishes of the people. No system of administration is ideally a perfect one which is entirely controlled by a professional official class. Municipal administration is so complex and so wide in extent, that it is extremely doubtful whether, under any system of organizing the mayor's powers, the influence of the mayor, serving for a short term only and depending upon permanent, professional, heads of departments for the execution of the municipal policy in its details, would be great enough to make the administration popular in character. Such a popular administration can be obtained only through a board system in which the members of the various boards should not be paid large enough salaries to make official position tempting as a means of livelihood. It would, indeed, probably be better to attach no emoluments whatever to these positions, in order that the motives of those who assume these offices might be absolutely unmixed. No emoluments being attached to these positions, persons desiring to obtain a livelihood out of political life would not be attracted to them, provided some method were adopted, which it would seem is quite possible, of preventing the incumbents of such positions from making money in illegitimate ways. The existence of the board

system would make it possible for the business and professional classes of the community to assume the care of the public business without making too great personal sacrifices. Indeed, if it were thought best, compulsory service as in the case of council members might be introduced as it has been introduced in Prussia. Compulsory service as municipal officer was formerly the rule in both England and the United States. Such a provision would not be unjust. For the work of almost all departments is of such character that it can be subdivided and distributed among the various members of the boards at the head of the departments. The work demanded of the members of these boards would be much diminished if proper methods of filling the higher subordinate positions were adopted. If, for example, the Public Works Department of the city were placed in the hands of a board having under its direction a competent engineer or engineers with permanent official tenure who would attend to the details and the purely technical work, there would be left for the board itself merely questions of policy to determine, which could be given to individual members of the board to attend to with the aid of the permanent professional force. The individual board members, by the expenditure of a comparatively small amount of time, that is as compared with what would be demanded of one man responsible for the entire work of the department, would

arrange all of the preliminaries which would have to be attended to before any matter was decided by a full session of the board. Such full sessions could be held often enough to attend efficiently to the work of the department, without making it necessary for any member of the board, even if account is taken of the individual work he would do, to devote all of his time, or even a large part of his time, to the public business, to the detriment of his private affairs.

Such a method of organizing the heads of municipal departments not only makes the administration of the municipal policy popular in character, but it also has the great advantage of awakening and keeping alive local public spirit. The mere fact that it calls into public service a large number of men who are not in public life for what they can get out of it, tends to form numerous centres from which will radiate the best sort of political influences, influences which will be continuously at work for the amelioration of municipal conditions. If combined with such a method of organizing the heads of municipal departments there are adopted proper methods of appointing, not merely the clerical and ministerial force of the departments, but also the higher subordinates who ought to have a professional and technical training, we shall have not only a popular administration, which will encourage the development of public spirit, we shall have also a most efficient administration.

Not only is the board system, when properly organized, theoretically the most advantageous method of constituting the heads of municipal departments in all cities, including even the largest, but it is practically the only one which can be adopted in the smaller cities. The financial resources of the smaller cities are not sufficient to permit them to pay salaries for these positions. But even in the smaller cities the work of one department is too much usually to allow the demand to be made of any one man that he attend to it without compensation. If the demand is made, the result will be that no one who is engaged in a regular occupation will seek the offices, which will be monopolized by those who are either possessed of means or hope to reimburse themselves, for the time they spend in the public service, through illegitimate means. This consideration had such weight with the commission appointed to draw up a charter for cities of the third class of the state of New York that they provided in the form of charter submitted to the legislature boards for most of the departments for such cities.

Finally, it is to be noticed that the board system is the system adopted everywhere where municipal government has been the most successful. It is the method of organizing executive departments adopted in England, France, and Germany. In England, as has already been intimated, the heads of municipal departments are the committees of the

city council, generally presided over by aldermen, who, it will be remembered, have longer terms of office than the city councillors, who are the other members of the boards. In France the same is true, there being a committee for each department at the head of which is the deputy of the mayor, elected by the council but assigned to the particular department by the mayor. The only difference between the French and the English systems is that in the former the committee, with a deputy at its head, is subordinate to the mayor, while in England it is subordinate to the council. In one case the mayor and in the other the council has the final power of decision. In Germany, however, the system is somewhat different in detail, although the principle of boards is just as universally adopted. Here the heads of departments are commissions formed of two distinct elements: first, the professional; and, second, the non-professional element. The professional element is to be found in officers who have had both a professional training and often long practical experience, and who make the administration of municipal government their sole occupation and find in it their means of livelihood. They are, however, chosen by the council for long terms, if not for life, and must be in most cases approved by the central administration. There is usually one of these officers for each of the departments, and the administrative routine of the department is

attended to by him. The non-professional element is to be found in persons, either members of the council, or outsiders chosen by the council for a fixed term, generally six years, who are obliged to serve for at least three years consecutively, and who act without pay. The heads of departments so organized are somewhat after the French method, subordinated to the municipal executive, which consists either of one man, where the burgomaster system is adopted, or the town executive board (*Magistratsrath*), which is the commoner method of organizing the municipal executive. While the three systems are alike in that the work of the departments is carried on by boards largely composed of and absolutely controlled by non-professional, unpaid members, and subordinated to some common head, in England the council, in France and Germany the executive, they differ so far as the relations of the professional officers to the heads of the departments are concerned. In France and England such permanent paid professional officials attending to administrative routine are subordinates of the heads of departments. In Germany, however, they not only attend to the administrative routine, but are, as well, members of the boards themselves. This last fact is characteristic of the entire Prussian administrative system. This method of combining professional officials and honorary officials in the same authority introduced into municipal administration by the re-

forms of Stein in 1808, has been extended by the local government reforms of the last twenty-five years to all parts of the local government system. As care is taken to give the non-professional element the actual control, the system is essentially popular in character and is kept from becoming bureaucratic, but the presence in the administrative authorities of professional trained officials serving for long terms does much to make the administration efficient since it puts at the disposal of the administrative bodies large technical knowledge and wide experience. The Prussian local government system, while of great complexity, is still of great interest, not only on this account, but because it is one of the latest developments. Its success will go far to solve the problem of the proper combination both of centralization and local government and of bureaucracy and self-government.

Finally, if an examination is to be made of the ordinary method of organizing the educational administration in the American cities, which must be regarded on the whole as one of the most successful branches of American municipal administration, it will be found that the board system is adopted.[1] At the head of the administration of the schools is to be found a school board, or

[1] In New York city it is true that the administration of schools has given rise to considerable dissatisfaction. This has been due, however, not so much to the board form of organization as to the failure to concentrate the responsibility in one board. Indeed, the

board of education, whose members are elected or appointed in various ways, and under this board, which concerns itself with the general policy of the schools, is to be found a more or less professional force, with the Superintendent of Schools at its head, which under the directions of the Board of Education conduct the common schools. This has had the result, as every one knows, of allowing politics, that is state and national politics, to have much less influence over the schools than they have over the other branches of city administration; and it has also had the effect of keeping alive the interest of the people in the schools, which are unquestionably considered one of the most, if not the most, important branch of municipal administration, and in the proper maintenance of which the people of almost every city of the United States take the greatest pride. It is also to be noticed that often, in those cities in whose organization the single-headed system predominates, when any great public work is to be undertaken for whose successful prosecution a continuous policy is desirable, the work is entrusted, not to the single head of the department of public works, but to a special commission or board whose members have long terms of office. Such, *e.g.*, was done in New

recent attempts at reform have not been directed towards the abolition of the board form, but rather towards the abolition of the local boards and the concentration of all powers in the central board.

York in the case of the aqueduct and also in the case of rapid transit. What is this but a recognition of the value of the board form in securing permanence of tenure and continuity of administrative policy?

All that remains to be said relative to the organization of the heads of the municipal departments concerns their relation to the chief executive. As the relation of the mayor to the council has already been discussed, what has been said relative to the mayor in that connection will, when taken in connection with what will now be said relative to his relations to the executive department, be sufficient to determine his position in the municipal organization. Two great defects in the municipal organization, which has gradually sprung up in this country as a result of the disintegration of the formerly all-powerful city council, are the diffusion of responsibility for municipal administration and the lack of harmony in the action of municipal authorities. It has been shown that the assumption by the state legislature of the power to organize the various municipal executive departments has resulted in the formation of a series of departments subordinated to no common superior, and each acting very largely in the management of municipal business, in accordance with its own notions of what is proper and expedient. That such a system has been productive of evil results may not be questioned. Of late years attempts

of two kinds have been made to decrease the independence of these departments. In the first place, it has been attempted to provide that the mayor, to whom no general power of removal is usually given, shall have the power to appoint the heads of the departments at the beginning of his term, which is usually a short one. This is the Brooklyn plan, which has recently been adopted as well for New York. This plan has, as has been pointed out, one very grave defect. It practically makes permanence in tenure of the heads of departments impossible, and thus effectually precludes the hope of obtaining continuity in municipal administration. It was, however, unavoidable because of the necessity of making municipal administration popular.

Sometimes, however, as for example in Boston and Philadelphia, the absolute power of removal is given to the mayor for all officers appointed by him. In Philadelphia such officers are to serve during the term of the mayor appointing them, and until their successors shall have been appointed. This is practically the Brooklyn system, and is open to the same objections. In the second place, the attempt has been made to secure unity and harmony of action by requiring, in the charter, the mayor to summon together all heads of departments at stated times. This is provided in Philadelphia and Cleveland. No objection can be advanced to such a plan, except that if some other

means be not provided to secure harmony of action, such as some sort of disciplinary power, it will, in many cases, be inefficient. It would seem in the conditions of our general administrative system, which does not make provision for any disciplinary power outside of the power of removal, that the mayor should be given the power of removal, — not merely the power to appoint new officers at the beginning of his term, which is a practical recognition of the power of removing the appointees of his predecessor, but a power of removal of a continuing character. Such a power of removal would, it is believed, have a far better influence in insuring permanent heads of departments than a grant to the mayor merely of the power to constitute the departments at the beginning of his term, so as to suit him. The temptation to any mayor, who is to be held responsible for the administration of the city, to make new appointments, is irresistible. He can never feel so much confidence in the appointees of his predecessor as he will in persons whom he chooses himself. If he has no continuing power of removal, he will almost inevitably make new appointments. The continuing power of removal is therefore much more calculated to secure reasonable permanence of tenure for the heads of departments, than is the power merely to make new appointments in the beginning of each new mayor's term.

To such a continuing power of removal two

objections may be urged: in the first place, our past experience goes far to show that the absolute power of removal is very frequently made use of for purely political partisan purposes. If, however, we can so determine the position of the city and its organization, that municipal government shall offer fewer attractions to political parties, this objection will lose much of its force. The attempt has been made to show that much can be done in this direction. The other objection to the continuing power of removal is that it will make it difficult, if not impossible, to obtain the proper sort of men as heads of the departments. This objection is, however, it is believed, based on theory rather than on actual practice. The power of removal of the President of the United States is absolute, but he has no difficulty in securing the services of able men and men of high character as heads of departments. The same thing is true of those cities which have adopted the idea of the absolute continuing power of removal. Further, if we can once get the people to hold to the view that permanence of tenure is necessary for these positions, and that the principle of "rotation in office," as it is called, must be productive of evil results in municipal administration, the liability of arbitrary removals will be much reduced. Such, for example, is the condition of public opinion in England. The council, a body which cannot in the nature of things feel the same responsibility as an American mayor

feels, has absolute power of removal, but that has not had the result of deterring men of high character from assuming positions of trust in the city government. It is of course true that the recognition of the absolute power of removal is not theoretically necessary. In Germany, for example, in the whole administrative system, including the municipal administration, the power of arbitrary removal is unknown. But in place of it, there has been developed a strong disciplinary power which may be exercised in case a subordinate refuses to carry out instructions of his superior, or is guilty of any misconduct in office. This disciplinary power consists of the power to impose fines, suspend from office, and finally of a power of removal for cause. It is exercised by the town executive after a proceeding resembling a judicial trial, and appeal may be taken from its decision to a body of a *quasi* judicial character, a body which, however, is not governed by the technical rules of ordinary judicial procedure. Some such principles have been introduced into our law, as in the case of the adoption of the principle of removal for cause in the city of New York. But as appeal may be taken from the action of the mayor to the courts, which are governed very largely by technical considerations, they have not had the good results that were expected of them. In other cases it has been required of the mayor that he shall give the person removed an opportunity to be heard in his

defence, and shall put on file the reasons for his action. Limitations of this sort would seem to be as large as can with advantage be adopted in this country. The continuing power of removal, subject to such limitations, which would decrease the mayor's actual power only so as to require that its exercise be the result of deliberation and of probable good cause, will, if no emphasis is laid either in the law, or by public opinion upon the appointment of new officers as heads of departments by each incoming mayor, have the advantages of making possible, permanence of tenure, and at the same time of subordinating all departments of the city government to some common municipal superior.

The abandonment of the idea of fixed terms of office would also be necessary. For the expiration of a fixed term of office always opens up the question as to the advisability of making a change in the incumbent, and exposes a mayor to the temptation of making a new appointment. Fixed terms are necessary only where there is no power of removal. If that is given to the mayor, there is no excuse for a fixed term. Necessary changes in office may be made through the exercise of the power of removal.

It will be noticed that the position of the mayor as outlined in what has been said is one of immense importance, that the duties attached to the office will be very arduous. The question may well be

asked: Will it be possible to get men of character to assume the position? Will not the same objections which have been shown to exist with reference to the single-headed departments exist in the case of the mayor? In other words, can any man engaged in active business, or in the carrying on of a profession, be induced to give, from the time and energy required by his regular occupation, sufficient time and energy to perform the duties of mayor properly, even during a short term of office. The organization of the English and German city would seem to indicate that the opinion of those countries is that this cannot be expected. In England, it will be remembered that the council, of which the mayor is merely the president, is not only the legislative, but also in law the administrative or executive body of the city. It is only because of an enlightened public opinion that politics do not creep into the administration of municipal affairs. The public opinion of this country not being so intelligent in this respect, one cannot believe that such a method of solving this question is possible for the present, whatever may be its theoretical advantages. In Germany, on the other hand, as has been shown, the city executive is commonly a board, the members of which are assigned to the different departments, while the board itself supervises the actions of these departments. The mayor, or burgomaster, where the board system of city executive is adopted,

is the president of the executive board, and is himself a professional officer, having a long term of office (if it is not actually for life, it may not be less than twelve years), receiving a large salary and devoting his entire time to municipal affairs. Where the board system is not adopted, he is himself the city executive, and is then also professional in character. Such a system has much in its favor, but it savors rather too much of professionalism to suit present public opinion in the United States. In France, however, we find the mayor serving without pay, occupying a position similar to the position assigned to the American mayor in what has already been said, a position which the American mayor also is rapidly actually acquiring as a result of recent municipal development in the United States. This position both French and American experience would seem then to show, is one which we can get proper men to fill. The mayor is the authority in our municipal system which has had the most creditable record. The position is one of such honor that it is nearly always possible to find some man prominent in the business world to fill it. It is seldom, though it has sometimes been the case, that the mayor has been a "political hack." If the reconstitution of the city departments were not, as now in this country, made practically the duty of each incoming mayor, the work of the mayor would be very much lightened and it would be easier than now to get the right men to

assume the office. Of course, under such a system short terms for the mayor, probably in no event longer than four years, and in the majority of cases no longer than two or three years, and frequent changes in the incumbents of the office, are the rule, although there are not infrequent cases of re-election, as witness the experience of Mayor Pingree, of Detroit. But in the case of the mayor, frequent changes are not so disastrous as in the case of the heads of departments. For the routine work of the administration could be carried on by permanent boards and officers. The general policy of the administration should be popular in character, and this can be obtained by giving the people reasonably frequent opportunities to express their opinion in choosing the mayor. If, however, the methods proposed in other chapters for decreasing the influence of the state political parties over municipal elections are successful, and if the attention of the voters can be confined to the election of the council and mayor, it is unquestionable that re-election of mayors will be more frequent, and thus reasonable permanence in the office of mayor might be secured, which is, of course, desirable if the government suits the wishes of the people.

Such, then, is the ideal form of organization of municipal government for this country. The whole executive power should be concentrated under the mayor, elected for a term of not over

four years. Under the mayor should be a series of boards, composed of unpaid members appointed by him with terms not fixed, but subject to removal by him at any time. The mayor should, however, state the reasons for his action, and give the officer removed an opportunity to be heard in his defence. Under the direction of each board should be permanent subordinates who, where their duties require it, should have had a previous training for the positions they occupy, which should be both theoretical and practical. It is of course true that practical training would in many cases be all that need be required, and that this practical training would itself result from mere permanence of tenure during good behavior. By such a system of organization, combined with a city council possessed of the power of determining the municipal policy, the municipal administration would be both permanent and efficient and subject to popular control, while it would have the inestimable advantage of awakening and keeping alive local public spirit.

CHAPTER XI

THE METROPOLITAN CITY

Our modern civilization has resulted not only in giving greater prominence to urban life; it has also had the effect of creating enormous cities. Nothing that the world has ever seen can equal the enormous urban communities which are at the present time to be found in almost every state of the Western world. These great communities have been due not only to the recent tremendous commercial and industrial expansion, but also are undoubtedly a direct result of the substitution for the small feudal state of the last century, of the present well-defined and well-organized national state. The growth of Vienna was due to the prominent position taken by Austria at the beginning of the century. Berlin owes its recent development in large part to the establishment of the German Empire. Paris and London, though to a lesser degree, are also instances of the important influence of politics on the growth of metropolitan cities. None of these cities has a favorable geographical situation. Three of them are not even seaports; indeed, are connected with the sea only

because they are situated upon either a very small river, or a river upon which it has been necessary to spend much money in order to make it navigable. London, it is true, is situated upon a navigable river of considerable importance, a river which further in early times was very much more important as an artery of commerce than it now is. Once, however, their predominance determined, and determined largely by political causes, the changed conditions of modern commercial intercourse, the substitution of the railway for the ship, have enabled large cities to maintain their supremacy notwithstanding the development in more favorable locations of most important rivals.

But while most of the great metropolitan cities of the Western European world owe their origin and growth in large part to political causes, geographical conditions may in particular instances be so favorable as to result in the growth of a metropolitan city which is not due in any way to political influences. No more marked example of this fact can be adduced than the enormous metropolitan district which has grown up about the mouth of the Hudson River. Favored by nature with an exceptionally good harbor, later made the terminus of a system of internal waterways, which is probably unsurpassed so far as the fertility and productiveness of the territory which it taps are concerned, this district has grown until it contains a population which is hardly exceeded by any other

such district in the world, and has reached the point which it now occupies without ever having been, except for a very short interval, the seat of the government of either the nation or the state of which it forms so important a part.

While municipal government generally presents most important problems for solution, metropolitan municipal government presents problems of a peculiar nature. The peculiarity of the problems presented by the metropolitan city is due, in part, to the most important cause of its development; *i.e.* the fact of its intimate connection with general politics, in part to the mere fact of its tremendous size. It is due, in the first place, to the influence which the metropolitan city, as the seat of government, has over the country as a whole. The complex social conditions attendant upon modern industrial civilization have had a profound influence on the organization of the modern administrative system. They have made necessary a greater degree of governmental activity together with a greater centralization of governmental functions. The metropolitan city when the capital of the nation is the place of residence of most of the administrative departments, whose influence is felt to the uttermost ends of the state. The legislative body also, in almost all cases, sits in a metropolitan city. It will feel very much more quickly the opinion of the inhabitants of the metropolitan district than it will those of the people in the outlying

districts of the state. In some instances the people of the metropolitan district have been able, as was frequently the case during the French Revolution, to dominate the policy of the legislature, although that body is in theory representative of the entire state. Regard must therefore be had in organizing the metropolitan city to the influence which it has over the politics of the state.

It was very largely on account of the experiences of France and Paris during the French Revolution, that the founders of the American government resolved to place the capital of their nation at a place where it would be outside of the jurisdiction of any one of the states of the Union, where its inhabitants would be rather under the direct control of the national government than able to dominate its policy. Somewhat the same policy has been pursued by most of the states of the American Union. It is only rarely that we find the largest city in the state chosen as the seat of the state government. On this account the problem of organizing the metropolitan city in the United States is somewhat simpler than it is in Europe. Here the metropolitan city has been due, as has been pointed out in the case of the metropolitan district of New York, rather to its extremely favorable geographical situation than to political causes. Here, therefore, the main problem which is presented to those who are attempting to frame an organization for the

metropolitan cities of the United States, is to be found in their size, in the immensity of their population. But while the metropolitan city in the United States does not have the same direct influence over the central government as does the European metropolitan city, still, on account of its mere size, on account of the number of its voting population, which is, at the same time that it controls the politics of the city, an important factor in state and national politics, the political parties, which have an enormous interest in city government generally, have an even greater interest in the metropolitan city than they do in the smaller cities.

The metropolitan city, even in the United States, will also, on account of its size, be more generally, than is the case with the smaller cities, entrusted with the discharge of functions of general state government. In most cases it will be found that in the metropolitan cities are consolidated not only the city and the town government, where the town exists, but also the county government. All the functions of general state government, which are in the more nearly rural districts of the state discharged by the county and town authorities, will be conferred upon the authorities of the metropolitan city. The result will be then that the authorities of the metropolitan city, even when it is not a political capital, will of necessity have to be subjected to a wider central control

than is the case with the authorities of the ordinary city, both in order to prevent them from exercising an undue influence on the political life of the state as a whole, and to keep them up to their work as agents of general state government.

The peculiarity of the problems presented by the metropolitan city is due in the second place to the mere fact of its tremendous size. The large size of the metropolitan city will make necessary very many branches of municipal activity which it is not necessary for the smaller cities to assume. Thus the need of some special method of housing the poor assumes real importance only in the case of the largest cities. The greater demands upon the metropolitan city, resulting from the greater population residing within it, will also produce a much greater complexity in municipal administration, and this complexity in its turn will make necessary the highest degree of administrative and technical skill in the discharge of municipal functions. Thus the enormous consumption of water by the population of the largest cities will make necessary a most complex system of waterworks, a system of waterworks which will demand the highest engineering skill in order that they may be properly constructed and maintained. The same thing is true of its sewerage system, and to a lesser degree of the method of cleaning its streets and removing the débris occasioned by the exigencies of domestic life. The proper ad-

ministration of these branches of local activity is dependent upon a proper organization of its authorities. Thus not only is the relation of the largest cities to the central government of the state more difficult to determine than is the relation to that government of smaller cities, but also the internal organization of the largest cities is more difficult to arrange on account of the greater local demands made upon them.

But not only do the ordinary problems of municipal government thus become intensified in the case of the metropolitan city; the metropolitan city also presents problems peculiar to itself. If the history of the development of almost any one of the great metropolitan districts is studied, it will be found that in nearly all cases it has grown, not from a common centre, but from several centres; that it owes its development to the fact that the growth from these various centres has been so great that finally the geographical distinctions which existed between them have become almost obliterated. The metropolitan city is thus in many cases a state in miniature. It is true, that on account of its greater simplicity and of the smaller number of the causes of development, the metropolitan district is much more homogeneous, both in population and geographical conditions, than is the ordinary state; but at the same time it is also true that the ordinary metropolitan district is more heterogeneous than is the ordinary city. This

greater heterogeneity would, if there were no other more powerful influences at work, naturally result in a somewhat decentralized municipal organization. But we usually find that the political influences to which it owes its development continue to have an important influence on the organization of its governmental authorities. Notwithstanding the great heterogeneity of metropolitan districts, their governmental authorities are much more under the control of the central state government than are the governmental authorities of the smaller cities. Thus in the case of London and Berlin, the former of which presents probably greater heterogeneity in origin and in present conditions than almost any other metropolitan city, we find the police absolutely taken out of the hands of the local authorities and put under the control of the central administration. The police of the metropolitan district of London are the only municipal police in England under the direct administration of the central government. Thus also in the case of Paris, not only is the police under the control of the central government of the country, which acts through a special Prefect of Police, but also almost the entire executive work of the city is done under the direct supervision of the central government, while the municipal council of the city of Paris is itself subjected to a much more extensive central control than is the municipal council of any other city in the Republic.

But notwithstanding this greater centralization of the governmental institutions of metropolitan cities, notwithstanding this assumption by the central government of the state of duties, which in the case of other cities are delegated to the municipal authorities, in almost every one of the large cities of Europe some consideration is paid to the heterogeneity of its conditions. Even in Paris, which from time immemorial has been subjected to a most strict central control, great regard is had for the localities of which it is composed, and through a somewhat decentralized municipal administration the endeavor is made to cultivate that feeling of neighborhood, without which permanently good government is impossible. The present form of municipal government which Paris enjoys, owes its origin, as do almost all of the French administrative institutions, to Napoleon. The elective mayor established by the revolutionary legislation of 1790 had been abolished by the Directory. Napoleon, however, provided for Paris a Prefect similar to the Prefect to be found in the various French departments. Previous to the Napoleonic reorganization of Paris, the government of the Directory, in accordance with its theory of cantonal administration, also had divided Paris into a dozen municipalities. In each of these municipalities the Napoleonic system placed an officer called the mayor, who was assisted by several deputies. The mayor and his deputies

were, however, merely the local agents of the Prefect, who was the real executive of Paris, was appointed by the central government, and had jurisdiction not only over the city or commune of Paris, but also over its surrounding suburban communes, which, together with Paris itself, constituted the Department of the Seine.

The combination of centralization and regard for local needs, which was characteristic of the Napoleonic organization of Paris, is still the leading feature of the administrative organization of the Paris of to-day. As the city has increased in population and extent, the original twelve sections have been increased to twenty. The influence of this borough or sub-municipality system cannot be better described than in the words of Dr. Shaw.[1] He says: "The twenty arrondissements of Paris are not bounded by temporary lines, nor are they mere electoral divisions like American city wards, or units of representation like our congressional and legislative districts. They are not subject to rearrangement in order to equalize their population. Some are much more populous than others, and the municipal council, with its four members from each arrondissement, does not represent the population with mathematical equality. But it will be found by far more convenient to assign additional members to the more populous arrondissements than to recast the lines in order to create

[1] *Municipal Government in Continental Europe*, p. 32.

districts of equal population. The arrondissements are designated by numbers from one up to twenty, but they are also named, and the names are suggestive of much neighborhood history and local tradition. Inasmuch as the centralizing administrative tendency is so exceedingly strong in Paris, it is highly fortunate in every-day practice that the twenty arrondissements should have gained each its own sense of permanent neighborhood identity. It is true that the people of the arrondissements have no local elective bodies. Nevertheless, there is a neighborhood life that centres in the commodious *mairie* building of each arrondissement. The twenty divisions make it easy to distribute and apportion the numerous administrative tasks that bring the government into contact with the people. Thus the arrondissement becomes the ready and natural unit for the administration of the school system. Moreover, instead of dealing with the central authorities of the prefecture at the *Hotel de Ville*, the people have only to go to the familiar *mairie* of their own arrondissement to report births and deaths and to conform with all the rules and regulations touching the record of vital statistics. It is here, as I have already remarked, that the civil ceremony of marriage is performed by the *maire* of the arrondissement. Here the registration of voters is made and kept, election arrangements are made, and jury lists are selected. It is here, also, that the youths

of the arrondissement are registered for purposes of military obligation. From the *mairie* of the arrondissement proceed the assessment and collection of all taxes. For minor licenses and privileges it is sufficient to make application at one's own *mairie*. Through this agency the wonderful popular loans of the municipality and of the state reach the small investors of Paris. The *mairies* form ideal library centres, and they contain the reading-rooms, and the branch reference and circulating libraries of the municipality. Obviously the arrondissement forms a local centre for all work of public relief and charity. It will be found to contain its local branches of the municipal savings bank system, and also its branch, of the *Mont-de-Piété*, the great municipal loan agency or pawnbroking shop. Thus the arrondissement of Paris is the local administrative unit. It is the institutions thus centred in the twenty districts that come into contact with the daily life of the people. The *maire* and his three adjuncts are appointees of the central prefecture and are regarded as the Prefect's local agents. But they are not capriciously removed or shifted about, and they grow into the exercise of a very strong neighborhood influence and authority with every motive for faithfulness to the welfare of the people with whose affairs from the cradle to the grave they are so intimately associated. . . . All discretionary authority and all deliberative functions belong to the

government of the metropolis as a whole [which it is to be remembered is highly centralized under the central government]. But the carrying out of as large an amount as possible of the executive work is assigned to the agencies or bureaus which the central authorities have established in each one of the sub-municipalities. The title of *maire*, conferred upon the chief functionary at the *mairie* building of every arrondissement, is well calculated to emphasize the dignity and permanence of the neighborhood régime and the lasting identity of the arrondissement's territorial bounds."

Similar provision is made by the Municipal Corporations Acts of Prussia for the development of neighborhood feeling. These provide that the city authorities may divide the city in case of large population or of great extent of territory into districts, at the head of each of which is placed a district overseer and a deputy. These are to be chosen from among the voters of the districts by the municipal authorities; and to them the municipal authorities may delegate such powers as they see fit. These powers, when delegated, are to be exercised, however, under the direction and supervision of the central town executive. In both Paris and in the larger cities of Prussia it will thus be seen that the necessity for decentralizing the government of the largest cities has not seemed so great as to demand the formation of minor municipal corporations with elective bodies and all

the machinery of government, but it is believed that all that is necessary has been done when provision has been made for a decentralization of the administration of the municipal policy which itself is determined by the central city council.

In the metropolitan district of London, however, a totally different policy has been pursued. London is probably the most marked example we have of a great metropolitan district which has had several separate centres of growth. The term "City of London" is applicable only to a very small portion of the metropolitan district, the original incorporated historic city of London. Around this original city there gradually grew a fringe of country villages, which extended, owing to the general commercial prosperity of the metropolitan district, until their limits joined. During the period that they were largely rural in character they had been governed, as were the rural districts of England, by the ordinary parish authorities. Gradually a central administration, which consisted, however, of several independent authorities, was developed. The most important change in the chaos resulting from a long period of development and somewhat haphazard legislation was made in 1855, at about the same time that the metropolitan police was formed and placed under the control of the Home Secretary. In 1855 Parliament enacted the Metropolis Management Act. This divided the area outside of the "City" into thirty-eight

districts. Twenty-three of these consisted of single parishes, and the remaining parishes were grouped into fifteen districts. These thirty-eight districts were permitted to attend to most of the matters which had been attended to by the former parish authorities, while there was formed, for the management of the central administration of the metropolis, a Metropolitan Board of Works. This body attended to public works interesting the entire metropolitan district. Later on, changes were made in the direction of centralizing other branches of administration such as schools and public charity, and in 1888 the attempt was made to provide that the metropolitan district of London, which had theretofore formed parts of four counties, should be formed into the administrative county of London. At the head of this administrative county of London was placed a county council, organized somewhat after the manner of the ordinary county council in the rural districts. This body has been given considerably larger powers than were possessed by any one of the former central authorities of the metropolitan district, its main powers, however, being those formerly possessed by the Metropolitan Board of Works. Most of the other central authorities were allowed to exist, such as the London School Board and the Metropolitan Guardians of the Poor. Very recently it has been proposed further to centralize the administration of the metropolitan

district under the London County Council. An abstract of the report of the Commission appointed in 1894 to recommend a proper scheme of government for the metropolitan district is to be found in Dr. Shaw's work on *Municipal Government in Great Britain*.[1] In this report the commissioners express their belief in the necessity of the continuance of conditions which have grown up largely as a result of the historical development of the metropolitan district. They believe that it would be inadvisable to sacrifice, for the sake of uniformity and administrative centralization, local bodies which have been more or less efficient in the performance of their duties. The report says: "A consideration of the evidence we have received confirms the opinion suggested by the course of previous inquiries and of legislation, or, in other words, by the historic development of the metropolis, that the government of London must be entrusted to one body exercising certain functions throughout all the areas covered by the name, and to a number of local bodies exercising certain other functions within the local areas which collectively make up London, the central body and the local bodies deriving their authority as representative bodies by direct election, and the functions assigned to each being determined so as to secure complete independence and responsibility to every member of the system." "London . . . is one large town

[1] Appendix 3.

which for convenience of administration as well as from local diversities comprises within itself several smaller towns, and the application of the principles, and still more of the machinery of municipal government to these several areas, must be limited by conditions arising from this fact." They suggest further on, that the functions to be entrusted to the local authorities shall be, first, sanitary administration generally; second, maintenance of highways other than main roads, including the regulation of locomotive traffic and tramways upon them, and small street improvements; third, valuation and assessment and registration of voters; fourth, the provision and maintenance of small open spaces and mortuaries; fifth, powers as regards electric lighting and (as regards certain small gas companies) the gas supply; sixth, the administration of the Overhead Wires and the Sale of Food and Drug Acts. In order, however, to provide for uniformity in the administration of those matters entrusted to the local authorities, the commission proposes that these local authorities shall be subjected to somewhat the same sort of administrative control to which the local authorities throughout the country generally are subjected. They propose in detail that this control shall consist, first, of the power of the central municipal body to frame by-laws under which the local bodies shall work, *e.g.* for sanitary matters generally, for locomotive traffic on highways other

than main roads, regulating the formation of new streets, drainage of buildings, and so on. In the second place, that power shall be given to the central authority to act in case of default by the local authority and to hear appeals from the action of the local authority in the proper cases. In the third place, that the consent of the central authority shall be necessary in order that certain actions on the part of the local authorities shall be valid, *e.g.* in the case of making loans or of the closing of streets for repairs. It is proposed also on account of the danger of lack of uniformity in methods of assessments for the purposes of taxation, if left in the charge of the local authorities, as is the case at present, that this matter shall be attended to under the immediate direction of the central authorities, so as to secure uniformity throughout the metropolitan area. Finally, in order to provide for some personal connection between the local authorities and the central authority of the metropolitan district, they recommend that the members of the central body elected for any district should be *ex officio* members for the local governing body of the district.

It will be seen that there is a great difference between the continental method of decentralizing metropolitan municipal government and the English method as seen in the present conditions of the metropolitan district of London, and in the recommendations of this commission. Whereas

on the continent the districts which may be formed in the metropolitan or larger cities are merely administrative districts, for the purpose of aiding in the administration of the entire city government; and whereas the officers in these districts are merely representatives of the central body, and are acting under its direction in the execution of a policy to be determined by that central body, the English idea of decentralization is very much the same as has been adopted for the relations of the localities generally to the central state government. It is recognized by the English method that the various districts of the general metropolitan district are to have a sphere of government of their own, just as much as the ordinary county corporation or the city corporation has a sphere of government of its own, distinct from the general government of the state. It is true that in the management of its affairs the districts of the general metropolitan district are to be subjected to a central control, but any one who has made a study of the recent development of local government in England will at once remember that the localities generally throughout England are subjected to a similar central control. Attention must be called also to the fact that in Prussia the determination as to what degree of decentralization shall be adopted in a particular city, is to be made by the municipal authorities themselves, and not by the

central legislature of the state. This is only in accord with the general continental principle of granting to local authorities large powers with regard to purely local matters. It has, of course, the great advantage of permitting each municipality, which feels that a decentralization of its municipal administration is necessary, to work out by itself, as the result of its own experience, the detailed plan which it deems will be best suited to its peculiar local conditions. While the continental plan permits a decentralization of all branches of activity in which the municipal government of the metropolitan district is engaged, the English plan, although granting larger powers to the local districts with regard to the matters which are entrusted to them, still absolutely determines that certain of the affairs of government of the metropolitan district are not capable of decentralization, and must therefore be attended to by the central municipal authorities. That both the English and the continental methods of decentralizing the government of the metropolitan city have been reasonably successful is seen from the testimony of the commissioners, whose report has been quoted from, and from Dr. Shaw's description of the "sub-municipality" system of Paris, as he calls it, which has already been given somewhat at length. Which system would be the preferable one in American conditions it is difficult to say. The English method is more in

accord with existing American conditions. The Prussian scheme meets more fully the legitimate demands of municipal home rule, but if adopted, should be confined exclusively to purely municipal matters. We have had recently in New York an example of the evil which may result from giving to local authorities within the municipality any powers with regard to matters which are of general concern. The way in which the schools in New York were managed under a system of municipal decentralization must ever be a warning to us to be extremely careful in the delegation of administrative powers, affecting the entire metropolis, to boards of local managers.

As regards the concrete suggestions of the London commission appointed for the purpose of decentralizing the metropolitan administration, there are some which to the ordinary American would appear to be extremely unwise. Such, for example, is the care of the public health. It would be extremely inadvisable in the present social conditions of New York, for example, to permit any body owing its powers to local election very large control over public health. All that could safely be given to a local body would be merely supplementary powers. As regards such matters as the public health, the wiser method to follow would unquestionably be the method adopted in Paris and in the German cities, that is, to recognize that the administration should be decentralized

but at the same time subjected to central administrative control. It is, indeed, probable that this method would be the better one to adopt in every case. For in the larger cities of America the population is extremely fluctuating. It is fluctuating not only because people are continually entering and leaving the city, but also because of the fact that people are continually changing their residences within the boundaries of the city. Districts are continually changing in character. With such a fluctuating population, it would be extremely difficult to cultivate a feeling of neighborhood. While this fluctuating population and its consequence, the difficulty if not impossibility of the development of local neighborhood spirit, would probably preclude us from adopting a system of decentralization which has worked with comparative success in the metropolitan district of London, it would by no means make it impossible to adopt the scheme of sub-municipalities which has been established for so long a time in Paris, and whose establishment is recognized as proper by the Municipal Corporation Acts of Prussia. Whatever success we might have through it in cultivating the feeling of neighborhood, which all must agree would be so useful in bettering municipal conditions, it certainly would have the effect of making the city government much more approachable than it is now to the ordinary municipal citizen. If a large metropolitan city is formed, the distances

from one part to another will naturally be very great. It becomes a matter of considerable difficulty for the ordinary municipal citizen, who is pretty thoroughly occupied in the transaction of his ordinary business, to communicate as often as he might wish and as often as it is advisable that he should communicate with the proper central authorities of the city government. Municipal decentralization is particularly necessary in the American system of government, which relies so much upon the action of the individual citizen for the discharge of governmental functions. Thus it is unquestionably the fact that the ordinary American municipal officer does not consider that it is his duty to see that the laws, which he is put in office to execute, are observed, but merely to see that complaints of individuals with regard to the violation of the law, if made with sufficient persistence, shall be examined, and if considered advisable, attended to. A great burden is thus thrown upon every individual citizen to see that the officers of the government actually have the law observed. It is true that under our ordinary system of municipal government many of the large and important departments of the city government have, in different parts of the city, a special local office, but these local offices are not, under our present system, at all concentrated. The police station in a given district is to be found in one part of that district;

the police court is to be found in another; there is generally no local office for the schools of the district outside of the school buildings in which the schools are held. In certain cases, however, it is also true that the departments have no local office whatever. It thus becomes necessary for the individual, upon whom so much reliance is placed to see that the law be executed, to make quite a search before he is able to determine where he may bring complaints of violation of the law which he thinks ought to be remedied. Now if some such system of decentralization as has been provided in the French system as seen in Paris were adopted, there would be in each of the great divisions into which the metropolitan city was permanently divided, one office, where any individual who had any complaint to bring might go, and it is unquestionable that the laws would be much better executed than they are at present, and at a much less expense of time and energy upon the part of the individual citizen.

Such is probably as far as we could, with wisdom, go in the path of decentralization in the present conditions of metropolitan municipal life in the United States. It might be that in time, as a result of the development of neighborhood feeling which it is reasonable to expect would develop from this degree of decentralization, we might be able to go still further and adopt some of the recommendations made by the commission ap-

pointed to devise a plan for the decentralization of London. But in considering their recommendations it must be remembered that this local neighborhood feeling is already in existence in the metropolitan district of London. The people of London have always been accustomed to act more or less vigorously in the local communities of which the metropolitan district is composed. In the metropolitan district of New York, for example, such is not at all the case. The people here are not even accustomed to act very vigorously in the municipal life of the cities of which the metropolitan district is composed. Having been so long under the control of the legislature, they are more accustomed, when they desire to make any change in municipal policy, to have recourse to the legislature than to resort to the local officers who in the past have had, and now have, so little to say as to the determination of municipal policy.

This problem of the administrative decentralization of the larger cities once determined, it is difficult to see why it would be impossible or even so extraordinarily difficult for us to develop a proper system of municipal government for the metropolitan city. It is true, as has been pointed out, that municipal problems are intensified in the larger cities; but at the same time, if the city is assigned its proper position in the governmental polity, and if an organization can be adopted which will exclude as far as possible national and state politics

from control over municipal affairs, there is no reason why a large city should not be governed as well, even under the régime of universal suffrage, as is a small city. Indeed, it is believed that at the present time the government of the larger cities of this country is as good as, if not better than, the government of the smaller ones.

In conclusion it may be said that all attempts at municipal reform in this country must bear in mind that the municipality should be in fact, as it is in theory, at the same time an organization for the satisfaction of local needs and an agent of the state for the administration of matters in which the state as a whole has a vital interest. One of the results of this position is that sufficiently large powers of local government should be granted to the city authorities to permit of the development of local pride and of efficient municipal administration. The attempt has been made to show that the continental method of granting such powers by general act subject to the limitations of the general statute law which may give certain powers to the central state authorities, is the proper method for providing for the performance of purely local work by the municipal authorities. A further result of the position of the city is that, as the agent of the general state government, it is absolutely necessary that it should be subjected to some central control. This central control should

not be exercised as it has been heretofore in the United States, by the legislature, which is unfitted for such a task. It is unfitted for such a task, both because of its irresponsibility, which results in an inefficient exercise of the control, and because, if such large powers are given to the legislature, it is extremely probable that they will be made use of in the interest of state and national politics, which of necessity have so great an influence upon its actions. The necessary control should be exercised by some responsible administrative authority. Further, in order to prevent the national and state political parties from interfering in matters of purely municipal concern, — from dominating the municipal policy, — the city should cease as far as possible to be the agent of the central state government. The state should assume itself the administration of those matters in which it is alone interested, leaving to the city the administration merely of those matters in which the city alone is interested or in which both the state and the city have considerable interest in common. Further, the demands of municipal autonomy and of the ideal municipal organization require that there should be formed a council whose functions shall be to determine the policy of the city, and an executive force under the control of the mayor, which shall attend to the carrying out, in its details, of the policy determined upon by the city council. This executive force should be so

organized as to promote the permanence in tenure not only of officers who have merely ministerial functions to perform, but also of those who are to superintend the technical and professional work which all cities must undertake. It should ultimately be organized also in such a way as to promote popular non-professional administration. This can be secured only through the formation of boards whose members, like the members of the council, should serve without pay, have quite a long term of office, but should be subject to removal by the mayor, who should give to every officer to be removed an opportunity to be heard in his defence.

If such a scheme were adopted, thus defining more clearly than at present the position of the city, and more clearly differentiating than at present deliberative or political from executive or administrative functions, it is believed that national and state political parties would have much less interest in, and opportunity for, interfering with municipal affairs, and that the principle of universal suffrage, which has so many things to be said in its favor from the theoretical point of view, could still be applied with advantage in the election of those few officers, that is, the members of the council, and the mayor, who would be elected by the people. It might be necessary in the case of these elective officers to provide for some method of minority representation. The method which has most to be said in its favor is the one which is the most

simple. This, it has been shown, is the method of preferential voting, as described above.[1] This method may be applied in the case both of the election of the members of the council and the mayor.

"The path of municipal reform," says Mr. Matthews,[2] "seems to lie not in radical changes in the suffrage, nor in the overthrow of representative institutions, but along the more prosaic lines of conservative experiment.[3] . . . There is no reason to anticipate failure if we restrict our efforts to the development and application to city government of that theory of limited democracy which is the special invention and political property of the American people. . . . We must rely on the American genius to solve the problem of democratic city government, not by sudden or revolutionary reforms, not through methods thrust by socialistic agitation upon communities like some in Switzerland which have lost the virility to resist; but by slow degrees in the Anglo-American

[1] See *supra*, p. 156.

[2] In his valedictory address to the city council of Boston, which is published under the name of "The City Government of Boston," p. 181, and contains many valuable suggestions for the municipal reformer.

[3] "Such as a reduction in the number of elective officers, the substitution of a single legislative branch for the dual system, the abolition of the district system of representation, the concentration of executive business in the mayor, fewer departments, longer terms of office, the civil service rules, and the limitation of indebtedness."

way in which all our political institutions have been developed. A certain inefficiency, a certain waste, must be conceded as part of the price we must pay for the blessings of free institutions, and success cannot be attained without the most thoughtful study and unceasing vigilance and effort; but there ought to be no doubt of the ultimate capacity of the American people to work this problem out as they have so many others."

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